AN ANALYSIS
OF
SNELL'S PRINCIPLES OF EQUITY

SIXTH EDITION

F. E. BLYTH

BANKING: A TREATISE ON THE LAW OF BANK-

SMITH'S PRINCIPLES OF EQUITY, [illegible]

DARBY'S TREATISE ON DAMAGES. Fifth Edition. By

A MANUAL OF THE PRACTICE OF THE SUPREME

THE ARBITRATION ACT, 1889. With Notes explaining its

THE JUDGMENTS, ORDERS, AND PRACTICE OF THE

THE LAW OF COPYHOLD IN WORKS OF LITERA-

A DIGEST OF PRECEDENTS OF PLEADING

THE LAW OF CORPORATIONS AND COMPANIES

LEADING PRINCIPLES OF CRIMINAL LAW, [illegible]

AN ANALYSIS

OF

SNELL'S PRINCIPLES OF EQUITY,

WITH NOTES THEREON.

AN ANALYSIS

OF

THE TWELFTH EDITION OF

SNELL'S

PRINCIPLES OF EQUITY,

WITH NOTES THEREON.

BY

E. E. BLYTH, LL.D., B.A. (Lond.)

Solicitor;

Incorporated Law Society's
Clifford's Inn (First) Prizeman, Mich. 1878
Broderip Conveyancing Gold Medallist, 1878, and Scott Scholar, 1878,
and First in First Class Honours, LL.B., London University, 1885.

Sixth Edition.

LONDON:
STEVENS AND HAYNES,
Law Publishers,
BELL YARD, TEMPLE BAR.
1898.

Printed by BALLANTYNE, HANSON & Co.
At the Ballantyne Press

PREFACE.

In presenting this Analysis, I have to acknowledge my indebtedness to Messrs. Stevens & Haynes for their kindness in sanctioning it, as proprietors of "Snell's Principles of Equity." My further obligations to various authors are apparent and duly acknowledged.

Having experienced in the course of my own reading the advantages of an analysis of this character, I venture to hope that it may prove useful to all law students, especially in preparing for examinations. This analysis is intended as a *companion* to Snell's work, with which it is to be read chapter by chapter. Such being the object in view, it has not been considered necessary, in quoting cases, to give references or details, except where these particulars do not appear in Snell.

E. E. B.

CONTENTS.

PART I.

INTRODUCTORY.

PART II.

EXCLUSIVE JURISDICTION.

PART III.

CONCURRENT JURISDICTION.

PART IV.

AUXILIARY JURISDICTION.

INDEX TO CASES CITED.

TABLE OF STATUTES CITED.

ANALYSIS

OF

SNELL'S PRINCIPLES OF EQUITY,

WITH NOTES THEREON.

PART I.—INTRODUCTORY.

CHAPTER I.

THE JURISDICTION IN EQUITY.

Definition of Equity.

PUTTING out of consideration all that part of natural equity sanctioned and enforced by, or by virtue of, legislative enactments, Equity may be defined as that portion of natural justice which, though of such a nature as to admit of being judicially enforced, was omittted to be enforced by the common law courts, an omission which was supplied by the equity courts.

The distinction between law and equity is a matter of form and history rather than of substance or of principle.

The *old* definitions claim a far wider jurisdiction, which is to be explained by remembering that the principles of equity have varied from time to time. Only extensive principles of jurisdiction could have originated the equity system.

A court of equity is now bound by settled rules and precedents as completely as a court of law, and there is no difference between them in the rules of interpreting laws.

Origin of Jurisdiction.

In the early periods of English history, ecclesiastics were the expounders and administrators of the law, who, being well

acquainted with the Roman law, were naturally largely influenced both by its principles and practice.

The growth of equity-jurisdiction may be traced to the following causes:—

(1.) The common law became a system positive and inflexible too early.

(2.) The general discouragement of the Roman law; its being deprived of authority in the courts.

(3.) The inflexible and cramping system of procedure adopted by the common law courts.

According to the common law, every kind of civil wrong was supposed to fall within some particular class, and for each class an appropriate writ or *breve* (which was the first step in every action) existed. The evil effects of this system were chiefly two:—

(*a.*) Where the wrong to be redressed actually fell within one of the classes recognised at common law, the suitor might select the improper writ, and fail on that account. *Sharrod* v. *N. W. R. Coy.* This cause of injustice removed by *Common Law Procedure Act*, 1852.

(*b.*) Where the wrong did not fall within any of the recognised classes, the suitor was without remedy.

(4.) "The statute *in consimili casu*," 13 Edw. I., stat. 1, provided a remedy by giving a larger discretion to the clerks in Chancery (by whom *all* writs were drawn up at that time) in the drawing up of writs, so that they might be adapted to meet all cases. This enactment proved inadequate for two reasons:—

(*a.*) The common law judges were the sole judges of the validity of the adapted writs, and were jealous of innovations.

(*b.*) New and unusual circumstances constantly occurring, increased the difficulty of the clerks in Chancery in adapting the writs, which had to be based on the Roman law. Further, new forms of *defence* arose, for which no provision had been made.

(5.) Where no relief could be obtained at common law, suitors applied to the King in Parliament (*i.e.*, in his Council), who referred the matter to the Chancellor. Edward III., by

an ordinance (22 Edw. III.), referred all such matters as were "of grace" to the Chancellor: from that time application by petition or bill was made to the Chancellor *direct* without any preliminary writ.

Fusion of Law and Equity.

By virtue of the Judicature Acts, 1873 to 1894, and the rules and orders made thereunder, one uniform system of procedure has been established in the courts of law and equity.

By the Judicature Act, 1873, it is provided that law and equity shall in every case be administered concurrently; that every judge shall have, and exercise, the jurisdiction of every other judge; and that, where there is any conflict between the rules of equity and law, the former are to prevail.

The following matters are, however, assigned to the Chancery Division exclusively:—

1. Administration of estates of deceased persons.
2. Dissolution of partnerships, and taking of partnership and other accounts.
3. Redemption and foreclosure of mortgages.
4. Raising of portions and other charges on land.
5. Sale and distribution of proceeds of property subject to any lien or charge.
6. Execution of trusts, charitable and private.
7. Rectification, setting aside, and cancellation of deeds and other written instruments.
8. Specific performance of contracts between vendors and purchasers of real estate, including contracts for leases.
9. Partition or sale of real estates.
10. Wardship of infants, and care of infants' estates.

Judicature Act, 1873, s. 34.

Classification of Equity-Jurisdiction.

(1.) The originally EXCLUSIVE jurisdiction.
Although nominally abolished by the Judicature Acts, it is practically retained.

(2.) The originally CONCURRENT jurisdiction.

Equitable rights are enforced in the originally *exclusive* jurisdiction. *Legal* rights are enforced in the originally *concurrent* jurisdiction. This distinction is still of importance.

(3.) The obsolete AUXILIARY jurisdiction.

Abolished (both practically and nominally) by the Judicature Acts. This jurisdiction existed where COMMON LAW *litigants* required the aid (*auxilium*) of equity in the assertion of their *legal* rights; *e.g.*, the discovery of title-deeds. All such aid can now be obtained in the Queen's Bench Division itself.

CHAPTER II.

THE MAXIMS OF EQUITY.

I. *No wrong without a remedy.* Equity will not, by reason of a merely technical defect, suffer a wrong to be without a remedy.

This maxim forms the foundation of equity-jurisprudence. Must be understood as referring to wrongs recognisable at law or capable of being judicially redressed.

To it may be referred *Uses and Trusts.*

Illustration—

Equity allowed a mortgagor to sue for land or rent although not possessed of the *legal* estate. By the Judicature Act, 1873, s. 25, § 5, this rule of equity is now made a rule of law.

II. *Æquitas sequiter legem.* Equity follows the law.

Two applications—

(1.) As regards *legal* estates, rights, and interests, equity is strictly bound by the rules of law.

Thus all the canons of descent (*e.g.*, the rule of primogeniture) must be observed in equity, although productive of greatest hardship and injustice; but equity may *avoid* the law in effect even while following it. *Alderson* v. *Maddison*; *Loffus* v. *Maw.*

(2.) As regards *equitable* estates, rights, and interests, equity, although not, strictly speaking, bound by the rules of law, yet acts in analogy thereto whenever an analogy exists.

Thus the rule in Shelley's case applies to executed trusts.

Illustration of the maxim in *both* applications—

In dealing with the statutes of limitations, as regards *legal* estates (that is to say, in its originally *concurrent* jurisdiction), equity never either exceeds or abridges the limit of time prescribed by law; while on the other hand, as regards *equitable* estates (that is to say, in its originally *exclusive* jurisdiction), equity often abridges, yet never exceeds, the prescribed limit.

Time runs both at law and in equity from the discovery, and not from the perpetration of concealed fraud.

3 & 4 *Will. IV.*, c. 27, s. 26; *Gibbs* v. *Guild.*

III. *Qui prior est tempore, potior est jure.* Where equities are equal, the first in time shall prevail.

Explanation—

As between persons having *only equitable* interests, if such equities are *in all other respects equal*, then *Qui prior est tempore, potior est jure; i.e.*, equity will not prefer one to the other on the ground of priority of time only, until it finds there is no other sufficient ground of preference between them. For example, negligence on the part of an equitable mortgagee, first in order of date, will deprive him of his priority.

Farrand v. *Yorkshire Bank; Rice* v. *Rice; Humber* v. *Richards.*

IV. *In æquali jure melior est conditio possidentis.* Where there is equal equity the law must prevail.

Explanation—

If the defendant has a claim to the passive protection of the court equal to the claim which the plaintiff has to call for the active aid of the court, he who has the legal estate will prevail.

Thorndyke v. *Hunt; Taylor* v. *Blakelock; London and County Bank* v. *Goddard.*

But such legal title must be absolutely complete, and not merely inchoate.

Powell v. *Lond. & P. Bank; Roots* v. *Williamson.*

This maxim is not confined in its operation to the tacking of mortgages. It applies in favour of all equitable owners or incumbrancers for value without notice of prior equitable interests. *Bailey* v. *Barnes.*

The last two maxims (III. and IV.) find their principal application in cases where the defence set up is *purchase for valuable consideration without notice.* As to when this defence can be successfully pleaded, the following rules have been settled:—

(1.) Where the defendant has both *legal* and equitable estate, the plaintiff having equitable estate only; the defence is good.

And this whether the defendant—

(*a.*) Obtains legal estate at the time of purchase.

(*b.*) Gets in legal estate subsequently without becoming party to a breach of trust.

(*c.*) Although without the legal estate, yet has the best right to call for it.

(2.) Where the plaintiff has the *legal* estate, the defendant having equitable estate only. A distinction formerly existed between the auxiliary and concurrent jurisdiction.

(*a.*) In the obsolete auxiliary jurisdiction this defence was good, no relief being given to the possessor of the legal title where it was set up.

Basset v. *Nosworthy; Wallwyn* v. *Lee; Joyce* v. *De Moleyns.*

If, however, the plaintiff could make out his case by independent evidence without the aid of equity, his title prevailed.

(*b.*) In the originally concurrent jurisdiction this defence was never any answer. *Williams* v. *Lambe.*

But NOW, in consequence of the fusion of law and equity brought about by the Judicature Acts, this defence no longer affords any protection, and *complete* relief must be given, even discovery of defendant's title-deeds.

Ind v. *Emerson.*

(3.) Where neither plaintiff nor defendant has the *legal* estate or the best right to call for it, each having an *equitable* estate only, the rights of the parties are determined by their respective dates. *Phillips* v. *Phillips.*

In cases falling under this rule it is immaterial whether the subsequent incumbrancers had or had not notice of prior incumbrance. *Ford* v. *White.*

But if the property subject to the incumbrances be situate in Yorkshire, the priorities of the several incumbrancers will be determined, *inter se* (in the absence of actual fraud), exclusively by the dates of the *registration* of the incumbrances.

Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54).

(4.) Where the defendant has both *legal* and equitable estates, the plaintiff having a mere *equity* or right and not an equitable estate, this defence is available.

Sturge v. *Starr.*

NOTICE.

In connection also with the third and fourth maxims, but especially the latter one, the doctrine of *notice* remains to be considered.

A person who purchases, although for valuable consideration, AFTER notice of a prior claim, becomes a *malâ fide* purchaser, and *cannot by getting in the legal* estate defeat such prior claim, but will be deemed a trustee to the extent of such claim. *In re A. D. Holmes; Potter* v. *Sanders.*

And even registration under the Registration Acts will not defeat a prior unregistered claim of which the person registering has express notice.

Le Neve v. *Le Neve.*

But as regards land in Yorkshire, the Yorkshire Registries Act, 1884, provides that registered assurances shall rank *inter se* according to date of registration, and shall not be affected by actual or constructive notice, except in cases of actual fraud. The Act contained a provision constituting registration actual notice, which however was repealed by the 48 & 49 Vict. c. 26.

A purchaser *with* notice, if his vendor bought *without*

notice, and a purchaser *without* notice although his vendor bought *with* notice, may respectively protect their title, *provided* that in each case such purchaser obtained the *legal* estate, or the best right to call for it, at the time of his purchase. *Harrison* v. *Forth.*

Notice of a *voluntary* conveyance of land did not affect a subsequent purchaser for valuable consideration under 27 Eliz. c. 4; but now by the Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21), any such subsequent sale would be inoperative.

NOTICE IS ACTUAL OR CONSTRUCTIVE.

Actual notice, in order to be binding, must be given by a person interested in the property and in the same transaction, or in the course of the negotiations.

Notice may be either written or verbal, except where required by statute or otherwise to be in writing.

Constructive notice or *imputed* notice may be defined as *evidence* of notice, the weight of the evidence being such that the court *imputes* to the purchaser that he had notice.

> It has also been well described as consisting "in those circumstances under which the court concludes, either that notice must be imputed on grounds of public policy to an innocent person, or that the party has been guilty of such negligence in not availing himself of the means of acquiring it, as, if permitted, might be a cloak to fraud, and which, therefore, the common interests of society require should, in its consequences, be treated as equivalent to actual notice."
>
> (*Dart, V. & P.*, 970, 1.)

Constructive notice is of several kinds—

(1.) Actual notice of a fact which would have led to notice of other facts.

Notice of a deed is notice of its contents, except in mercantile transactions: *Bisco* v. *Banbury.*

Where the deed might have been inspected.

Reeve v. *Beveridge; White* v. *Smith.*

A lessee has constructive notice of his lessor's title.

Patman v. *Harland.*

(2.) Purposely avoiding inquiry will not save a party from being fixed with notice. *Jones* v. *Smith.*

(3.) Third party in possession, or appearance of property such as to put a party upon inquiry.

Allen v. *Seckham; Cavander* v. *Bulteel.*

(4.) Notice to agent notice to principal, in cases where the knowledge of the agent is so material to the particular transaction as to render it the *duty* of the agent to communicate it to the principal.

Wyllie v. *Pollen; Bradley* v. *Ritches.*

But where the agent is party to a fraud, notice is not imputed; and so under the Partnership Act, 1890, notice to a partner designing a fraud does not operate as notice to the firm.

Notice to *solicitor* of trustees or mortgagees is not notice to the trustees or mortgagees.

Saffron-Walden v. *Raynor.*

Under the Conveyancing Act, 1882, s. 3, in order to affect the principal with notice, counsel, solicitor, or agent must have obtained his knowledge in the *same* transaction.

Notice that title-deeds are in the possession of another may constitute notice of any claim that other may have: thus a legal mortgagee or purchaser, who has not obtained the deeds where

(1.) He made no inquiry for them, } Will be postponed to a prior equitable estate or subsequent equitable owner who used due diligence.

(2.) He made proper inquiries and received reasonable excuses for their non-delivery,

(3.) He received some deeds, reasonably believing them to be all, } Will not lose his priority.

Northern Counties v. *Whipp.*

But now all questions of constructive notice are settled by the Conveyancing Act, 1882, under which constructive notice may be classified as follows:—

(1.) Notice which would have come to the purchaser *indirectly* as the result of reasonable inquiries and inspections.

(2.) Notice which comes *directly* to his *counsel*, solicitor, or agent *as such* in the SAME transaction.

(3.) Notice which would have come to his solicitor or other agent *as such* in the SAME transaction *indirectly* as the result of reasonable inquiries and inspections.

The effect of the words "as such" is, that a purchaser will only be affected with notice which has come to the agent, as agent for the purchaser. *In re Cousins.*

Reasonable inquiries and inspections are such as would usually be made by business men under similar circumstances. *Bailey* v. *Barnes.*

Purchasers with notice (actual or constructive) of restrictive covenants can be restrained by injunction from breach thereof. This rule, known as the *Tulk* v. *Moxhay* rule, applies to negative covenants only.

V. *He who seeks equity must do equity.*

That is to say, in the transaction in which relief is sought. Where the plaintiff had *legal* rights, there was no necessity for him to come to courts of equity for relief.

Illustrations—

(*a.*) Married women's equity to a settlement under law prior to the Married Women's Property Act, 1882.

(*b.*) Acquiescence. Person standing by must give compensation.

VI. *He who comes into equity must come with clean hands.*

That is to say, so far as the subject-matter of the litigation is concerned. *Overton* v. *Banister.*

VII. *Vigilantibus non dormientibus, æquitas subvenit.* Delay defeats equities.

"Nothing can call forth a court of equity into activity but conscience, good faith, and reasonable diligence."

Smith v. *Clay.*

VIII. *Æqualitas est summa æquitas.* Equality is equity, or equity delighteth in equality.

Illustrations—

Equity leans against joint-tenancy; thus the survivor is a trustee for the representative of the deceased in proportion to the sum advanced by him (notwithstanding the legal estate is vested in the survivor) in cases of—

(*a.*) Joint-purchases, where money advanced in *unequal* shares, as appears by the deed.

Lake v. *Gibson*; *Lake* v. *Craddock.*

(*b.*) Joint-mortgages, whether money advanced in *equal* or *unequal* shares. *Morley* v. *Bird.*

IX. *Non quod dictum sed quod factum inspiciendum est.* Equity looks to the intent rather than to the form.

Illustration—

Relief against penalty or forfeiture.

Peachy v. *Somerset.*

To this maxim we owe the equitable doctrines governing *mortgages.*

X. *Equity looks on that as done which ought to have been done.*

Explanation—

Equity will treat the subject-matter of a contract as to its consequences and incidents, in the same manner as if the act contemplated in the contract had been completely executed.

To this maxim may be referred the equitable doctrine of *conversion.*

XI. *Equity imputes an intention to fulfil an obligation.*

Explanation—

Where a man being bound to do an act, does something capable of being considered as in fulfilment of his obligation, it will be so construed.

Sowden v. *Sowden.*

Under this maxim come the equitable doctrines of *satisfaction* and *performance.*

XII. *Æquitas agit in personam.* Equity acts *in personam.*

The only remedy originally to be obtained at common law consisted in *damages,* but Equity compelled the wrongdoer to actually *do* what he had contracted to do.

The principal application is in procedure; equity will enforce specific performance of a contract even where the subject-matter of the suit is beyond the jurisdiction of the court, because it acts by process *in personam.* *Ewing* v. *Orr-Ewing; Penn* v. *Baltimore.*

But such an action cannot be entertained if the title itself is in question, for that must be decided by the *lex loci rei sitæ.* *In re Hawthorne.*

To this maxim the former jurisdiction of equity to restrain actions at law by *injunction* is to be referred. *Earl of Oxford's Case.*

PART II.—THE ORIGINALLY EXCLUSIVE JURISDICTION.

CHAPTER I.

TRUSTS GENERALLY.

THE statutes of mortmain having prohibited gifts of lands for religious purposes, the practice grew up (about the time of Edward III.) of making grants or feoffments to *third* persons *to the use* of the religious houses. At *common law* the estate vested in the grantee only was recognised, and the use engrafted upon it was totally disregarded. But in *equity* the Chancellor—an ecclesiastic—held that the *conscience* of the grantee was charged with the declaration of the use, although it did not attach to the *land* itself, and so compelled him to hold as trustee for the benefit of the persons in whose favour the use was declared. From this period it is clear that the owner of the use (equitable owner) was the real beneficial owner, the original grantee being merely the *legal* owner. The religious houses were speedily deprived of the benefits gained by such a result, a further statute of mortmain being passed in the reign of Richard II. which extended the prohibition to uses, whether direct or indirect. Meanwhile the advantages to be derived from the newly established *uses* had been perceived by others, and in respect of persons other than religious houses the system of uses remained in active operation.

The advantages resulting from possessing a mere *use* in land instead of the legal estate therein were these—

(1.) Uses were not subject to the law of escheat.

(2.) Uses were free from feudal burdens, *e.g.*, wardship and marriage.

(3.) Uses were not liable to be taken in execution under an elegit.

(4.) Uses were devisable, while the land itself could not be dealt with by will.

The Statute of Uses (27 Hen. VIII. c. 10) was passed for the

express purpose of abolishing these uses. It enacted that where any person should stand seised of land to the use of another, such other (the person having the use) should be deemed in lawful seisin and possession for such estate as he had in the use. That is to say, the *use* became converted into the *land*.

Examples—

(*a.*) Express use. Conveyance to A and his heirs to the *use* of B and his heirs. A, who before the statute took the fee-simple, now takes nothing, the whole estate, both legal and equitable, being at once vested in B.

(*b.*) Resulting use. Voluntary conveyance by X to A and his heirs simply. Before the statute X would have been deemed in equity the beneficial owner for want of consideration to pass the estate to A. So after the statute X becomes also the legal owner, and the effect of the conveyance is *nil*, the whole estate, both legal and equitable, at once resulting to X the grantor.

The object of the Statute of Uses was defeated by a decision to the effect that *at common law* there could not be "a use upon a use." *Tyrrell's Case.*

Example—

Conveyance to A to the use of B to the use of C. It was held B took the whole estate, but that C's interest was a use upon a use, which the statute had no energy to reach.

Just as Equity, before the statute, had upheld uses, so now it held that the use upon a use ought to be recognised, and therefore gave effect to such use, which became known as a *trust*.

In the example above given, A takes the estate under the old law, B takes it under the statute, but, nevertheless, as trustee for C, in whom at equity the whole beneficial interest is deemed vested.

In all such conveyances there are therefore two estates to be considered—

(1.) The estate recognised at common law under the statute, *i.e.*, the *legal estate*.

(2.) The estate, the use upon a use, recognised at equity only, *i.e.*, the *equitable estate* or *trust*.

It must be remembered that trust estates are for the most part subject to all the rules applicable to legal estates. Thus,

a conveyance unto and to the use of A and his heirs to the use of or upon trust for B and his heirs, or the heirs of his body, gives to B either an equitable estate in fee-simple or fee-tail. And where the estates in possession and remainder are both equitable, the rule in Shelley's case is applicable.

An equitable estate in fee-simple belongs to a purchaser of freehold property immediately after the purchase contract is completed.

The Statute of Uses does NOT apply to—

(1.) Pure personalty. The statute speaks of lands, tenements, and hereditaments only.

(2.) Impure personalty or leaseholds.
(3.) Copyholds.
} The statute speaks of "seisin," a term applicable to freeholds only.

(4.) *Active* as opposed to *passive* uses, even in respect of freeholds: thus, when the grantee to the use of another has active duties to perform, the legal estate remains in the grantee.

Formerly trusts of all kinds might have been created or assigned by word of mouth, but the Statute of Frauds (29 Car. II. c. 3) requires—

(1.) All declarations or creations of trusts of *lands, tenements,* or *hereditaments* to be evidenced by writing. (Sect. 7.)

(2.) All grants and assignments of ANY trust to be in writing. (Sect. 9.)

With two exceptions—

(*a.*) Trusts *arising* or resulting from any conveyance of lands by *implication* or construction of law.

(*b.*) Trusts *transferred* or extinguished by act or operation of law. (Sect. 8.)

This statute applies to freeholds, leaseholds, copyholds, and (with the exception of sect. 7) also to personalty.

Definition and Classification of Trusts.

A TRUST when used in the sense of an equitable interest is a beneficial interest in or a beneficial ownership of real or personal property unattended with the possessory and legal ownership thereof.

A trust has been defined as—An equitable obligation, either expressly undertaken or constructively imposed by the court,

under which the obligor (who is called a trustee) is bound to deal with certain property over which he has control (and which is called the trust property) for the benefit of certain persons (who are called the beneficiaries or *cestuis que trust*), of whom he may or may not himself be one (*Underhill's Trusts*, 4th ed. p. 1).

Trusts are thus classified :—

(1.) Express trusts.
  (*a.*) Private trusts.
  (*b.*) Public (or charitable) trusts.
(2.) Implied trusts.
(3.) Constructive trusts.

CHAPTER II.

EXPRESS PRIVATE TRUSTS.

AN *express trust* is a trust which is clearly expressed by the author thereof, whether verbally or by writing, or may fairly be collected from a written document. Express trusts are of various kinds.

Firstly, TRUSTS EXECUTED *or* EXECUTORY.

A trust is said to be *executed* when no act is necessary to be done in order to constitute it, the trust being finally declared by the instrument creating it.

A trust *executory* or directory is a trust raised either by a stipulation or by a direction, in express terms or by necessary implication, to make a settlement or assurance to uses, or upon trusts which are indicated in but do not appear to be finally declared by the instrument containing such stipulation or direction.

A test question in distinguishing the two is, Has the author of the trust been *his own conveyancer?*

Egerton v. *Brownlow.*

I. *Where trust executed*, the maxim "Equity follows the law" is always applicable, *e.g.*, the rule in Shelley's case is followed.

II. *Where trust executory*, this maxim is or is not applicable according as a contrary intention on the part of the author of the trust is or is not expressed or implied in conformity with the rules of equity. *Glenorchy* v. *Bosville.*

Executory trusts arise in two ways—

(1.) *Marriage articles or settlements*, the object of which is deemed to be provision for the issue of the marriage. In these instruments, therefore, an intention *contrary* to the rule laid down in Shelley's case is *always* implied.

Trevor v. *Trevor.*

(2.) *Wills*, in which the intention must appear from the instrument itself: they are construed—

(*a.*) According to the legal effect of the words used, *unless* a contrary intention is *expressed* on the face of them. *Sweetapple* v. *Bindon.*

(*b.*) According to the contrary intention whenever that is expressed or indicated.

Papillon v. *Voice; Glenorchy* v. *Bosville.*

Secondly, Trusts Voluntary *or for* Valuable Consideration.

General Rules—

(1.) The court will not execute a voluntary CONTRACT.

Jefferys v. *Jefferys.*

(2.) An IMPERFECT voluntary *conveyance* will not be enforced.

(3.) An EXECUTED trust is binding although voluntary.

Ellison v. *Ellison.*

The test question is, Has the trust been completely constituted?

These rules are exemplified in the following manner:—

I. *Voluntary trusts will be enforced*

Where the author of the trust has done everything which, according to the nature of the property comprised in the instrument, is necessary to be done in order to transfer the property and render the instrument binding upon him.

Milroy v. *Lord; Richards* v. *Delbridge.*

This may be effected—

(1.) Where the donor is both legal and equitable owner—

(*a.*) By actual conveyance to the donee or a trustee for him.

Ellison v. *Ellison.*

(*b.*) By donor's declaration of trust for donee.

Ex parte Pye; Steele v. *Walker; Fox* v. *Hanks.*

(2.) Where the donor is equitable owner only—

(*a.*) By direction to trustees to hold on trust for donee.

Except in the case of pure personalty, this direction must be in *writing*. *Statute of Frauds*, s. 7.

(*b.*) By conveyance of the equitable interest by *deed*.

Gilbert v. *Overton*; *Kekewich* v. *Manning*; *Nanney* v. *Morgan*.

Voluntary trusts in favour of charities or arising under wills are enforced, although executory.

II. *Voluntary trusts will not be enforced*,

Whether the donor is legal or equitable owner, where there is no declaration of trust, or the instrument creating the trust is in any way imperfect.

Wherever the facts show an intention to transfer property and not to declare a trust, equity will not give effect to an imperfect transfer by treating it as a declaration of trust.

The rule formerly was that a trust would not be enforced where the instrument was imperfect

(1.) If the property comprised in it was assignable at law.

Antrobus v. *Smith*; *Searle* v. *Law*; *Richards* v. *Delbridge*.

(2.) If the property was not assignable at law, but the donor had left something imperfect which it was in his power to render more nearly perfect.

Fortescue v. *Barnett*; *Edwards* v. *Jones*.

But since the Judicature Act, 1873, the distinction between properties assignable and not assignable at law has become unnecessary; the sole question NOW being whether the property has been completely and legally assigned or not.

Thirdly, TRUSTS FRAUDULENT

Under the provisions of various statutes and otherwise.

I. By 13 Eliz. c. 5, avoiding as fraudulent against CREDITORS all covinous conveyances and gifts of *lands* or *goods* tending to defeat or delay creditors, except where made on good consideration and *bonâ fide* to a person without

notice of such covin. The conveyance will be fraudulent unless made both upon good consideration AND *bonâ fide.*

A VOLUNTARY settlement is void under this statute when it can be shown that its effect was to deprive the settlor of the means of paying certain THEN EXISTING debts. *Freeman* v. *Pope*; *Spirett* v. *Willows*; *Holmes* v. *Penny.*

A conveyance for VALUE is not void under this statute unless an *express* fraudulent intent or express *malâ fides* can be shown. *Ex parte Chaplin*; *Alton* v. *Harrison.*

And even if the conveyance be void within this statute, a purchase for value from a person entitled thereunder *before* it is set aside is good.

Halifax Bank v. *Gledhill*; *In re Brall.*

II. Formerly by 27 Eliz. c. 4, avoiding as fraudulent against subsequent PURCHASERS for valuable consideration (whether with or without notice) voluntary conveyances of *lands* of every tenure. This statute has been practically repealed by the Voluntary Conveyances Act, 1893, which provides that no *bonâ fide* voluntary conveyance shall be avoided thereunder. In future, therefore, to defeat a voluntary conveyance it must be shown to be *malâ fide.*

With regard to the statute 27 Eliz. c. 4, note—

(1.) It had no application to chattels personal.

(2.) Where a voluntary assignee of leaseholds undertook to observe covenants contained in the lease of an onerous nature, the assignment was not avoided thereby. *Price* v. *Jenkins.*

But such an assignment would be void under the 13 Eliz. c. 5. *Ridler* v. *Ridler.*

(3.) Only purchasers direct from the voluntary *settlor himself* could claim the benefit of the statute, and mortgagees and lessees were deemed purchasers *pro tanto.*

(4.) It did not avoid a purchase for valuable consideration from a person entitled under a voluntary conveyance *before* it was set aside.

George v. *Milbanke.*

Bona fide purchasers are such as take *bona fide* and for valuable consideration.

Meritorious (or good) considerations are such as blood or natural affection.

Valuable considerations are money, marriage, or the like.

ANTE-nuptial agreements must be in writing (Statute of Frauds, s. 4), and when followed by the marriage, the wife became a PURCHASER within the 27 Eliz. c. 4.

Bona fide POST-nuptial settlements were supported on very slight considerations, so as not to be void by this statute. *Hewison* v. *Negus.*

Mala fide ANTE-nuptial settlements were and will continue to be void within this statute, the marriage being in such cases no real consideration.

Re Pennington ; Columbine v. *Penhall.*

The Voluntary Conveyances Act, 1893, affords no protection to *mala fide* settlements.

As to the question who are within the scope of the marriage consideration, so as to prevent a settlement being voluntary, it was formerly considered that the children of wife by a former husband were within it. *Newstead* v. *Searles.*

And on the other hand, that the children of husband by a former wife were not. *Cameron* v. *Wells.*

But now it appears to be settled that in both cases the settlement will be deemed voluntary.

De Mœstre v. *West ; Att.-Gen.* v. *Jacobs-Smith.*

III. By the Bills of Sale Acts, 1878 and 1882, avoiding as fraudulent bills of sale of personal chattels remaining in the possession of the grantor, unless duly registered within seven days from date thereof, and the other provisions of the Acts duly complied with.

The consideration must be truly stated in the bill of sale. A bill of sale given by way of security is void under the Act of 1882 if it is given for less than £30, or if it be not substantially in the form specified in the schedule to that Act.

Ante-nuptial settlements or agreements for a settlement are exempted from the operation of these Acts.

IV. By the Bankruptcy Act, 1883, avoiding as fraudulent against the trustee in bankruptcy POST-nuptial settlements (*except* of property which has accrued to the settlor after marriage in right of his wife)—

(1.) If the settlor becomes bankrupt within two years from date of settlement.

(2.) If the settlor becomes bankrupt at any subsequent time within ten years from date of settlement, unless the parties claiming thereunder can prove that the settlor was at the time of making it able to pay all his debts without the aid of property thereby settled, and that his interests in such property had passed to the trustee of the settlement on its execution.

Ante-nuptial covenants and contracts to settle future acquired property are void under this Act upon the settlor's bankruptcy (except where acquired in right of his wife), unless prior thereto such property has been both acquired and paid, or transferred, pursuant to the covenant or contract.

It was formerly considered that a purchaser for value deriving title under a voluntary settlement could not get an unimpeachable title until ten years had elapsed since the date of the settlement. *Briggs* v. *Spicer.*

But it has now been settled that the word "void" in the Act should be read "voidable," so that any *bonâ fide* alienation for value prior to bankruptcy will be good.

In re Brall; In re Carter and Kenderdine.

Fourthly, TRUSTS IN FAVOUR OF CREDITORS.

Voluntary trusts of personalty are *irrevocable*, and were never affected by the 27 Eliz. c. 4. But trusts in favour of CREDITORS form exceptions to this rule, as being illusory trusts, merely dispositions made for the benefit or convenience of the SETTLOR. *Garrard* v. *Lauderdale.*

(1.) When a debtor conveys property to trustees for payment of his debts, the *debtor* alone (not the creditors) is thereby constituted *cestui que trust.* *Walwyn* v. *Coutts.*

As a general rule, therefore, the debtor may vary or revoke the trusts at pleasure. But this right of revocation is strictly personal to the debtor. *Fitzgerald* v. *White.*

(2.) A trust in favour of creditors is *irrevocable* AFTER communication to the creditors, IF they have thereby been induced to a forbearance in respect of their claims which they would not have otherwise exercised, or if they have in any way assented to and acquiesced in the deed creating the trust, or acted under its provisions and complied with its terms.

Acton v. *Woodgate; Garrard* v. *Lauderdale; Field* v. *Donoughmore.*

Should the trust deed contain no provision as to surplus after payment of debts in full, there is no resulting trust in favour of the debtor, but the surplus (if any) will belong to the *creditors.* *Cooke* v. *Smith.*

(3.) Where a creditor is party to a trust-deed and has executed it, or been instrumental in causing its preparation, as to him the deed is irrevocable.

(4.) A creditor, ignorant of the existence of the trust-deed, cannot claim the benefit of its provisions.

Jones v. *James.*

(5.) Trust-deeds in favour of creditors must be registered under the Deeds of Arrangement Act, 1887.

Fifthly, EQUITABLE ASSIGNMENTS.

Choses in action were formerly not assignable at *common law,* although assignments of equitable choses in action for valuable consideration have always been enforced in *equity.*

The following exceptions have, however, been engrafted upon the ancient common law rule, which is now practically abrogated:—

(1.) Contracts with the sovereign.

(2.) Negotiable instruments, formerly by the law merchant, but now by the Bills of Exchange Act, 1882.

(3.) Where the debtor assented to the transfer of the debt.

(4.) Contingent interests in real estate, by 8 & 9 Vict. c. 106.

(5.) Bail bonds, by 4 & 5 Anne, c. 16.
(6.) Bills of lading, by 18 & 19 Vict. c. 111.
(7.) Policies of life assurance, by 30 & 31 Vict. c. 144.
(8.) Policies of marine assurance, by 31 & 32 Vict. c. 86.
(9). Debts and other legal choses in action where the assignment is absolute, by Judicature Act, 1873.

No particular form of assignment is necessary in equity; a mere order given by debtor to creditor upon a third person is deemed a binding assignment or appropriation.

Diplock v. *Hammond.*

But a mere mandate is insufficient; and no appropriation or assignment is effective unless the fund, from which payment is to be made, be indicated.

The assignee of a chose in action must give NOTICE to the holder of the fund assigned in order to obtain a right *in rem;* without notice he has merely a right *in personam* against the assignor, and third parties will not be bound. When the fund is in court, a stop-order must be obtained, which has all the effect of notice. This doctrine of equity is known as the

Rule in Dearle v. *Hall.*

That is to say, where a fund is legally vested in trustees, an assignee who gives notice to the trustees has a better title in equity than an assignee of an earlier date who has not given notice, *i.e.*, priority depends upon priority of notice.

Notice should be given to each trustee, as although notice to one of several trustees is notice to all, yet, if the trustee to whom notice is given die without having communicated the notice to his co-trustees, and after his death the *cestui que trust* creates an incumbrance, and the assignee gives notice to the surviving trustees, then the subsequent incumbrancer might have priority over the previous incumbrancer.

Ward v. *Duncombe.*

The rule applies even to a trustee in bankruptcy, who must give notice in order to preserve his priority.

Re Stone's Will.

But is not applicable to shares in registered companies, or to chattel interests in real estates.

The assignee of a chose in action takes subject to all equities subsisting against the assignor.

Turton v. *Benson*; *Knapman* v. *Wreford*.

Except in the case of negotiable instruments or debentures payable to the bearer.

By the Judicature Act, 1873, s. 25, § 6, debts and other legal choses in action are rendered assignable at law *subject* to all equities affecting the assignor, provided the assignment—

(1.) Is absolute, not purporting to be by way of charge.
(2.) Is in writing under hand of assignor.
(3.) Express notice in writing thereof be given to the holder of the fund.

A mortgage of a chose in action is within the terms of this section, provided there is an actual assignment of it and not a mere charge. *Tancred* v. *Delagoa Bay*.

Upon the assignment of a chose in action notice is necessary

(1.) To prevent the debtor paying the assignor.
(2.) To prevent a subsequent assignee gaining priority by notice.
(3.) In the case of debts due to the assignor in the way of his trade, to take them out of his order and disposition under the Bankruptcy Act.
(4.) In the case of legal choses in action, to enable the assignee to sue in his own name under the provisions of the Judicature Act, 1873.

Equity will not, as a general rule, enforce the following assignments, on the ground that they are contrary to public policy:—

(1.) Assignments of alimony, or of pensions and salaries of public officers, unless office is a sinecure or duties have ceased and pension or salary is not expressly rendered inalienable.
(2.) Assignments affected by champerty, maintenance, or other corrupt considerations.
(3.) Assignments of mere *lites pendentes*, but a purchase from *defendant* is always valid.
(4.) Assignments by incapacitated persons, *e.g.*, purchase by solicitor of subject-matter of action, in which he is retained.

Sixthly, Precatory Trusts.

A trust which may fairly be collected from a written instrument is an express trust: thus where property is given absolutely to any person who is by the donor recommended, entreated, or wished to dispose thereof in favour of another, a trust termed a Precatory Trust is held to be created, provided there are present the following requisites, known as the

Three Certainties.

(1.) The words in question are so used that on the whole they ought to be construed as imperative or certain. No technical words are necessary.

The tendency of Equity is strongly *against* construing recommendatory words as imperative so as to create precatory trusts. *In re Adams* v. *The Kensington Vestry.*

And

(2.) The subject-matter of the recommendation or wish be certain.

The subject-matter is never certain where the first taker has a discretionary power to withdraw any *indefinite* part of it from the objects of the recommendation or wish.

And

(3.) The objects or persons intended to have the benefit of the recommendation or wish be certain. *Harding* v. *Glyn.*

If *any one* of these "three certainties" be wanting, no trust is ever held to be created.

Whenever it is clear that a *trust is* INTENDED (although not validly created), the devisee or legatee *cannot take* beneficially, but is excluded for the benefit of the heir or next of kin. *Briggs* v. *Penny.*

Seventhly, Secret Trusts.

Where a will makes no disposition of the beneficial interest in property, which is thereby given to a trustee or vests in the executor, and nothing appears *on the will* suggesting the inference that the trustee or executor is to take beneficially, no secret trust will be enforced; and the trustee or executor will take for the benefit of the heir or next of kin.

Where it does so appear that the trustee or executor is to take beneficially, no secret trust affecting it will be enforced:

Except on the ground of *fraud*, in which case the trustee or executor will be compelled to disclose the trust, and, if lawful, to execute it.

In order to make a secret trust effectual, it must be communicated to the devisee or legatee in the testator's lifetime, and he must accept that particular trust.

Eighthly, POWERS *in the Nature of* TRUSTS.

POWERS are not imperative, and, as a general rule, equity will not execute an unexecuted power.

TRUSTS are always imperative, and equity will execute them.

Powers in the nature of trusts combine the qualities of the two in such a manner that equity will enforce their execution.

Where there is a *general* intention in favour of a class, and a *particular* intention in favour of individuals of that class, and who are to be selected by another person, and the particular intention fails from that selection not being made, the court will carry into effect the *general* intention in favour of the class. *Burrough* v. *Philcox.*

Ninthly, PURCHASER'S LIABLITY *to see to* APPLICATION *of Purchase-Money where there are* Cestuis que trustent.

PRIOR to the statutes hereinafter referred to, a purchaser was bound to see that his purchase-money was applied in fulfilment of the trust, unless expressly exonerated by the author thereof. Further, in cases of—

(1.) Personalty—

Purchaser from executor was exonerated from this liabibity, except in case of his *fraud.*

(2.) Realty—

(*a.*) Trust or charge for payment of

Debts generally,
Debts and legacies generally,
} Purchaser was exonerated.

(*b.*) Trust or charge for payment of

Specified debts,
Legacies, or
Annuities only,
} Purchaser was not exonerated.

Elliot v. *Merryman.*

Lord St. Leonards' Act (22 & 23 Vict. c. 35, now styled "The Law of Property Act Amendment Act, 1859"), and Lord Cranworth's Act (23 & 24 Vict. c. 145), contain provisions exonerating purchasers and mortgagees under instruments made subsequent to their respective dates of commencement.

The Trustee Act, 1893, s. 20 (56 & 57 Vict. c. 53), repeating a similar provision in the Conveyancing Act, 1881, applies to ALL TRUSTS WHENEVER CREATED, and makes the written receipts of trustees sufficient discharges in every case.

The Settled Land Act, 1882, which is also retrospective, contains similar provisions as regards moneys arising thereunder. But purchasers from a tenant for life to be exonerated from liability must see that the purchase-money is paid either into court or to at least two trustees of the settlement, as the tenant for life may direct.

The implied power given to executors by a charge of debts would appear to be paramount to that of the tenant for life under the Settled Land Acts, so that his consent would not be necessary to the sale.

The Land Transfer Act, 1897, vests realty as well as personalty in the personal representatives, so that it would appear in future realty will be on the same footing as personalty in respect to this question.

Generally, therefore, the purchaser is now exonerated in every case.

Where, however, land is devised subject to a specific charge, the purchaser must still see to the application of the purchase-money.

It is important for purchasers to see that the person professing to sell as trustee is in fact the person authorised for that purpose by the instrument creating the trust, and also that the power or trust for sale still exists.

So where the transferee of a mortgage is selling, it must be seen that the power of sale is exercisable by an assign of the mortgagee. *Rumney* v. *Smith.*

The provisions of the Conveyancing Act, 1881, that a receipt, in the body of or indorsed upon a purchase-deed, shall be sufficient authority for paying the purchase-money to the solicitor of the vendor, did not apply to the case of vendors who are trustees. *In re Bellamy.*

And trustee-vendors had no power to authorise one of their number to receive the purchase-money. *Re Flower.*

Now the Trustee Act, 1893, has placed trustee-vendors in the same position as other persons in this respect. *Hetley.*

But a trustee-vendor cannot authorise his attorney to appoint a solicitor to receive purchase-money on his behalf.

Re Hetley.

CHAPTER III.

EXPRESS PUBLIC (OR CHARITABLE) TRUSTS.

CHARITIES, in the legal acceptation of that term, are and comprise—

Firstly, Charitable Uses recognised as such by 43 Eliz. c. 4 (now repealed, but practically re-enacted by the Mortmain and Charitable Uses Act, 1888), namely: every disposition having for its object relief of the poor, advancement of learning or the Christian religion, or any other useful public purpose.

Secondly, Charitable Uses similar to those specified in the statute and which have been held to be within its spirit, *e.g.*, repair of church monuments, foundation of lectureships.

Charities must be of a PUBLIC character, and objects merely for the benefit of individuals are not charitable in the legal sense.

I. Charities are treated with more favour than private individuals in the following respects:—

(1.) A GENERAL intention of charity will be effectuated.

(*a.*) A gift to a charity will be upheld as valid, no matter how uncertain the object may be, provided the object be *distinctly* charitable. The nomination of the objects will be treated as the *mode*, and the gift to charity as the *substance* of the disposition.

Philanthropic purposes are not charitable purposes in the legal sense; and a Friendly Society is not a charity.

(*b.*) Where the literal execution of the trusts becomes inexpedient or impracticable, the court will execute them *cy-pres, i.e.*, as nearly as possible in conformity with the original intention, which must be a *general* intention of charity. *Moggridge* v. *Thackwell.*

In both the above cases a private individual would receive no help from equity.

(2.) Defects in conveyances supplied. A private individual would receive no help from equity to perfect an imperfect voluntary gift.

(3.) No resulting trusts.

(*a.*) Where there is a general intention of charity there will be no resulting trust to the settlor, for the court will execute the intention.

(*b.*) Where the increased revenues of a charity give rise to an excess of income beyond the specified objects, the court will apply the surplus in conformity with the original intention.

EXCEPTION IN BOTH CASES. — Where the settlor merely *appropriates part* only of the capital or income to the charity, the residue will result to him.

(4.) Charities are not within the rule against perpetuities.

(5.) Even prior to the Voluntary Conveyances Act, 1893, a purchaser who purchased with notice of a charitable gift, or without notice from a person who had notice, took subject to it, and derived no benefit from 27 Eliz. c. 4. *Att.-Gen.* v. *Newcastle; Ramsay* v. *Gilchrist.*

II. Charities are treated on a level with private individuals in the following respects:—

(1.) Want of executor or trustee supplied.

(2.) Lapse of time a bar. But the Judicature Act, 1873, s. 25, provides that as between an express trustee and his *cestui que trust*, no lapse of time is a bar, except in so far as the Trustee Act, 1888, applies.

(3.) Separation of legal from illegal objects, where the charitable purposes are legal and the properties appropriated thereto are ascertainable.

(4.) Trusts for accumulation of income disregarded when the capital has vested absolutely.

III. Until recently charities have been treated with less favour than private individuals in the following particulars:—

(1.) Assets were not marshalled in favour of a charity in the absence of an express direction to that effect in the will; for to do so would have been to contravene the provisions of the Mortmain Acts.

The rule of the court adopted in all such cases was to appropriate the fund as if no legal objection existed as to applying any part to the charity legacies, and then holding so much of the legacies to fail as would in that way fall to be paid out of the prohibited fund.

Williams v. *Kershaw.*

But the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), has now practically swept away the restrictions on gifts of real estate to charities by making such gifts valid, while compelling the charities to sell within a year. This Act applies to wills made before its passing, provided the testator die after.

(2.) Charitable gifts of an obnoxious character are void as contrary to public policy, *e.g.*, gifts for superstitious purposes.

But trusts in favour of animals are not superstitious.

By the Charitable Trusts Acts, 1853–1894, considerable powers are vested in the Charity Commissioners with reference to the administration of charities. They are empowered to appoint and remove trustees, to make vesting orders, and to authorise sales and leases, and to settle schemes for the administration of the charity. The jurisdiction of the Commissioners, however, only arises where there are endowments.

CHAPTER IV.

IMPLIED AND RESULTING TRUSTS.

AN *implied trust* is a trust which is founded on an unexpressed but presumed (*i.e.*, implied) intention of the party creating it.

A *resulting trust* is a trust which is *implied* in favour of the *person creating* it, or his representatives.

ALL resulting trusts are implied trusts, but not every implied trust is a resulting trust, strictly so called.

Distinguish a resulting trust from a resulting use. In the former it is the beneficial interest, but in the latter it is the legal estate, which results.

The chief instances of implied trusts are—

I. Resulting trust to person who advances the purchase-money for property which is conveyed to a third person.

Dyer v. *Dyer.*

(1.) Parol evidence is always admissible to show the actual purchaser, notwithstanding the Statute of Frauds. For—

(*a.*) It is a trust resulting by operation of law.

(*b.*) The parol evidence is merely for the purpose of proving that the nominal purchaser is but the *agent* of the actual purchaser.

(2.) No resulting trust where the law would be infringed.

(3.) Resulting trusts may be rebutted—

(*a.*) By parol evidence showing that the nominal purchaser was intended to take the whole beneficial interest.

(*b.*) By the contrary equitable presumption of *advancement* which will be raised in favour of—

(*α.*) A legitimate but not illegitimate child of the purchaser.

(*β.*) A person to whom the purchaser has placed himself in *loco parentis*, even an illegitimate child.

(*γ.*) Wife of purchaser, but not a woman with whom he has contracted an illegal marriage.

Drew v. *Martin.*

But in general there is no presumption of advancement when the purchaser above mentioned is the *mother*, as a married woman is not primarily liable for the maintenance of her children.

The equitable presumption of advancement (being only a *primâ facie* presumption) may be again rebutted by parol evidence to the contrary, such as the *contemporaneous* acts and declarations of the purchaser which are receivable in evidence both for and against him. *Williams* v. *Williams.*

The *subsequent* acts and declarations of the purchaser are evidence against him, but not for him.

On the other hand, the subsequent acts and declarations of his child are evidence for the purchaser against the child. *Sidmouth* v. *Sidmouth.*

II. Resulting trust of unexhausted residue.

(1.) A trustee is excluded, by the very fact of being named trustee, from benefiting by a resulting trust. A devisee *subject to a charge* merely takes beneficially; but a devisee *upon trust* takes no benefit even after satisfaction of the specified purposes of the trust.

King v. *Denison.*

(2.) Where a trust of property has been created, and there is no one in whose favour it can result.

(*a.*) *As to real estate,* where the *cestui que trust* dies intestate and without heirs. Prior to the Intestates' Estates Act, 1884 (47 & 48 Vict. c. 71), the trustee, being seised in fee, would have held the lands discharged from the trust. *Burgess* v. *Wheate.*

So also in the case of a mortgage in fee, on the death of the mortgagor intestate and without heirs, the equity of redemption would have belonged to the mortgagee, and no escheat taken place.

Beale v. *Symonds.*

Copyholds in all these respects were like freeholds.

Gallard v. *Hawkins.*

Under the Intestates' Estates Act, 1884, however, the rule is altered, and there would now be an escheat to the crown or the lord in all cases.

(*b.*) *As to personal estate* where the *cestui que trust* dies intestate and without next of kin, the crown takes it as *bona vacantia.* If, however, it vests in the executor *virtute officii,* he may (unless he is also appointed trustee) retain it as against the crown.

Roose v. *Chalk.*

This is not affected by the Intestates Estates Act.

(3.) Formerly executors took undisposed-of residue of testator's personal estate, unless excluded by testator's express or implied intention.

By the 1 Will. IV. c. 40, executors were made trustees for the next of kin in respect of any such undisposed-of personalty, in the absence of any contrary intention in the will.

III. Resulting trusts, under head of Conversion, *vide infra*, chap. ix.

IV. Implied trusts arising out of joint-tenancies. Joint-tenancy is not favoured in equity, and very slight circumstances will be considered sufficient to treat such a tenancy as one in common, and the surviving joint-tenant will be deemed a trustee for the representatives of the deceased.

(1.) Joint-advance of purchase-money in *unequal* proportions, appearing on the deed itself, will be deemed to create a tenancy in common.

Lake v. *Gibson*; *Lake* v. *Craddock*.

(2.) Joint-advance on mortgage in *equal* or *unequal* proportions will be treated as a tenancy in common.

Morley v. *Bird*.

Equity will not treat the mortgage as joint, even though it contain an express declaration that advance was made on a joint-account. *Smith* v. *Sibthorpe*.

(3.) Joint commercial purchases are deemed tenancies in common.

(4.) Land devised to joint-tenants who treat it as partnership assets will be deemed to be held in common.

CHAPTER V.

CONSTRUCTIVE TRUSTS.

A CONSTRUCTIVE TRUST, as distinguished both from express and implied trusts, is a trust which is raised by construction of equity in order to satisfy the demands of justice *without reference to any presumable intention* of the parties, either express or implied.

The chief instances of constructive trusts are—

I. LIEN on LAND sold. This constitutes a *charge* in equity only upon the lands irrespective of possession.

(1.) Vendor's lien for unpaid purchase-money; which may be enforced against—

(*a.*) The purchaser and all volunteers taking under him.

(*b.*) Subsequent purchasers for value with notice.

(*c.*) Trustee in bankruptcy although without notice.

(*d.*) Subsequent purchasers for value even without notice, if they have not obtained the *legal estate.*

Mackreth v. *Symmons.*

Unless the vendor has been guilty of *negligence.*

Rice v. *Rice.*

But this lien cannot in any case be enforced against a *bonâ fide* purchaser for value without notice who has the LEGAL estate.

The lien will not be lost *merely* by the vendor's taking collateral security; the question of abandonment depends upon the *nature* of the security, as amounting to evidence of intention to rely upon such security solely.

Mackreth v. *Symmons.*

(*a.*) A *personal* security will not *per se* prove an intention of waiver.

(*b.*) The question to be considered in every case will be—Is the security *substitutive* of, or only *cumulative* with, the lien? *Buckland* v. *Pocknell.*

The vendor's lien is assignable, even by parol.

Not being an express trust, the vendor's right to recover the unpaid purchase-money may be barred by the Statutes of Limitation.

(2.) Vendee's lien for prematurely paid purchase-money, which may be enforced generally against the like persons as the vendor's lien.

As regards lands (not of copyhold tenure) in Yorkshire, a lien arising since 31st December 1884 will not prevail, unless it be registered; and priority of registration will determine priority of title except in cases of actual fraud.

Yorkshire Registries Act, 1884.

The equitable lien for purchase-money attaches to land only, and not to personal chattels.

II. Renewal of lease by trustee in his own name.

A trustee renewing a lease in his own name, even after refusal of the lessor to grant a new lease to the *cestui que trust*, will be held a constructive trustee for the benefit of the *cestui que trust*.

Keech v. *Sandford* (*the Romford Market Case*).

The same rule applies to all persons standing in a fiduciary relation in respect of the property affected, *e.g.*, a tenant for life or partner renewing a lease.

Where a lease renewed by a trustee in his own name contains other lands in addition to those demised by the old lease, the constructive trust will apply to the latter lands only. *Acheson* v. *Fair*.

III. Allowance of expenditure for improvements, where same are necessary and permanently beneficial.

Where a part-owner, acting *bonâ fide*, permanently benefits an estate by necessary repairs or improvements, a constructive trust may arise in his favour in respect of his expenditure. *Neeson* v. *Clarkson*.

Improvements by a tenant for life should now be made under the provisions of the Improvement of Land Act, 1864, and Settled Land Act, 1882.

Trustees have a lien on trust funds for expenses properly incurred by them.

Where payments have been made to prevent the lapse of a policy of insurance, the payer (not being a volunteer) has a lien on the policy or its proceeds, but not on the footing of salvage moneys. *Leslie* v. *French*.

IV. Formerly the heir of mortgagee in fee dying intestate was held a constructive trustee of the estate for the benefit of the personal representatives. *Thornborough* v. *Baker*.

Under the Conveyancing Act, 1881, s. 30, upon the death of the mortgagee (testate or intestate), the legal estate devolves upon the personal representatives.

But this provision does not apply to copyholds.

Copyhold Act, 1894, s. 88.

As to equity's mode of constructing trusts—

The inquiry is first made—Who has got the *legal* estate?

Then equity builds or *constructs* upon such LEGAL ESTATE the trust in question. The rule being in all cases to construct a trust upon the *legal estate only*.

CHAPTER VI.

TRUSTEES AND OTHERS STANDING IN A FIDUCIARY RELATION.

A TRUSTEE should be a person capable of taking and holding the legal estate, and possessed of natural capacity and legal ability to execute the trust.

An infant, although not incapable, is unsuited for a trustee on account of disability. Since the Naturalisation Act, 1870, and Married Women's Property Act, 1882, there is no legal objection to an alien or married woman being a trustee.

But the husband of a married woman trustee must concur in her conveyance of real estate, which will have to be duly acknowledged. *Re Harkness and Alsop.*

Where once a trust exists, equity never wants a trustee, but will follow the legal estate, and declare the person in whom it is vested to be a trustee. The lapse of the legal estate in no way affects the beneficial interest, for the court will provide a trustee or assume the office in the first instance. Under the Judicial Trustees Act, 1896, a judicial trustee may be appointed.

A trustee is the *servant* of his *cestui que trust*, embracing under that term the aggregate body of persons (born and unborn) having beneficial interests; but the *controller* of his *cestui que trust*, when that term refers to a person having only a *partial* interest in the trust-fund. The majority of the *cestuis que trustent* may, upon the total failure of the purposes of the trust, demand back the trust-fund. *Wilson* v. *Church.*

Trustees may be compelled to perform any particular duty.

A trustee cannot renounce after accepting the trust, and the taking of probate by an executor-trustee is an acceptance of the entire trust. The only methods by which trustees could formerly be released were—

(1.) By the court.

(2.) Under a special power in the trust instrument.

X But if she is a bare trustee may convey as if she were a feme sole — R.S.O. c. 129 s 8.

(3.) By consent of all parties, being *sui juris*.

But now, under the Trustee Act, 1893, s. 11, a trustee may retire by deed from the trust, provided two trustees remain, who, with the person authorised to appoint new trustees, consent to such retirement.

And under the Judicial Trustees Act, 1896, a judicial trustee may retire on giving notice to the Court and reporting what arrangements have been made for the appointment of his successor.

Delegation by Trustees.

Delegatus non potest delegare—a trustee cannot delegate his office, which is one of personal confidence, in the absence of express authority; that is to say, as long as he remains a trustee. *Dewar* v. *Brooke.*

Such delegation is, however, permitted where there is a moral necessity (which includes regular course of business) for it. *Joy* v. *Campbell.*

This rule does not protect the trustee if he employ an agent who is an improper agent for the purpose in question. *Fry* v. *Tapson.*

But under the Trustee Act, 1893, a trustee may depute his solicitor to receive purchase-money for an estate or policy moneys. R.S.O. c. 129 s 28.

Diligence Required of Trustees.

(1.) As regards *duties*—*Exacta diligentia.* The utmost diligence is the only protection against liability. Breaches of duty are such as permitting the trust-fund to remain unnecessarily in the power of a third person, or mixing the trust-fund with his own moneys.

(2.) As regards *discretions.* Diligence such as usually exercised by men of ordinary prudence in the management of their own affairs is sufficient. A trustee having a discretionary power of investment must not invest in securities in which he would not place his own moneys. He must exercise a just discretion.

Whiteley v. *Learoyd*; *Andrews* v. *Weall.*

When lending money upon the security of any property, a trustee should exercise his own judgment; he must see that the security is one authorised by the trust instrument, and take care not to lend more than two-thirds of the value, as ascertained by the report of a properly qualified valuer specially employed *by him* for the purpose; and further, he should require the advice of the valuer as to the loan, to be expressed in his report.

If, however, the loan exceed this limit and loss arises, the trustee will only be liable for the excess, provided the investment is in all other respects proper.

Trustee Act, 1893, ss. 8, 9.

Prior to this Act the rule was that trustees must not advance more than two-thirds of the value of land, or one-half of the value of house property.

In case of loss, it is no defence that the trustees believed the borrower to be well able to pay the loan on his personal covenant.

An executor or administrator is a trustee within the meaning of the Trustee Acts.

The solicitor to a trustee concerned in the matter of an unauthorised investment is not liable as constructive trustee for loss arising therefrom.

It is a breach of trust to invest trust moneys on a contributory mortgage. *Webb* v. *Jonas.*

But there is no fixed rule that a trustee lending trust-funds on second mortgage is liable for loss; the onus, however, is on the trustee to show it was a proper investment.

Want v. *Campion.*

Under the Judicial Trustees Act, 1896, the court may relieve a trustee from all liability for a breach of trust where the court is of opinion that the trustee has acted honestly *and* reasonably in the matter.

Remuneration of Trustees.

The general rule is that no remuneration can be allowed to trustees, for they must not profit by their trust.

Robinson v. *Pett.*

Trustees may, however, receive remuneration—

(1.) Under an express or implied provision in the trust instrument.

(2.) Under an express contract between the trustee and *cestui que trust.*

(3.) Where expressly allowed by the court.

(4.) Under the provisions of the Judicial Trustees Act, 1896.

(5.) Where a person is a constructive trustee merely through having employed the money of another in his business.

(6.) A solicitor-trustee may be employed by his co-trustee to defend legal proceedings instituted against the trustees, and will be entitled to his ordinary costs.

Cradock v. *Piper.*

But this rule does not extend to mortgages, so that a solicitor-mortgagee employed by his co-mortgagees to bring foreclosure proceedings or defend a redemption action will not be entitled to profit costs.

Hibbert v. *Lloyd.*

The Mortgagees' Legal Costs Act, 1895, enabling solicitor-mortgagees to make the same charges as if acting for a client, do not apparently apply where the solicitor-mortgagee is a trustee.

Further, trustees may not derive any advantage out of the trust; for example, they are not allowed to charge more than they gave for incumbrances on the trust estate, nor to employ trust funds in business while merely paying interest thereon. In fact, all profits made by trustees by virtue of their office belong to the beneficiaries. This rule applies to constructive trustees, *e.g.*, agents, directors.

Keech v. *Sandford*; *Fox* v. *Mackreth.*

Purchases by Trustees.

Trustees will not, as a general rule, be allowed to purchase the trust estate from their *cestuis que trustent.* The exceptions to this rule are where—

(1.) Trustee gives a fancy price.

(2.) The offer to sell proceeds from *cestui que trust,* and

trustee gives market price, keeping him at arm's-length.

(3.) The sale is by public auction, and trustee has leave of court to bid. *Boswell* v. *Coaks.*

(4.) The trustee is only a bare trustee.

But a sale, void within this rule, may by lapse of time become impossible of rescission; although in general the Statute of Limitations is no bar: but damages may be given where rescission would be inequitable.

A Constructive Trustee

is not liable to the same extent as express trustee; for example, a vendor, although called a constructive trustee for the purchaser, is only a trustee to extent of his obligation to perform the purchase agreement, an obligation which may be barred by lapse of time. The rule has hitherto been that time is no bar in the case of an express trust, but that it bars a constructive trust. *Soar* v. *Ashwell; Knox* v. *Gye.*

Now under the Trustee Act, 1888, trustees (whether express or constructive) have the full benefit of Statutes of Limitation exactly as if they were not trustees, except in cases of fraud.

Liability of Trustee for Co-trustee.

Trustees must all join in giving receipts, their power being a joint one.

A non-receiving trustee who has joined in a receipt is guilty of *neglect of duty* in subsequently *leaving* moneys in the hands of the recipient trustee, and will be liable for such co-trustee. *Townley* v. *Sherborne.*

(*a.*) A non-receiving trustee who joins in a receipt for sake of conformity is not by *that act alone* rendered liable for co-trustee; and the Trustee Act, 1893, recognises this principle.

(*b.*) A trustee, although joining in receipt for conformity only, will be liable for neglect of duty in allowing money to *remain* in power of recipient trustee longer than the circumstances reasonably require.

Brice v. *Stokes.*

Liability of Executor for Co-executor.

Executors need not all join in receipts, their power being joint and several.

(*a.*) An executor joining in a receipt is PRIMA FACIE liable for co-executor since he does an unnecessary act, and is not fulfilling a duty merely, as in the case of a trustee. *Brice* v. *Stokes.*

(*b.*) This PRIMA FACIE liability may, however, be displaced by the executor proving that he did not in fact receive. *Westley* v. *Clarke.*

The real test appears to be whether the money, although not actually received by all the executors, was *under their control.* *Joy* v. *Campbell.*

But where a non-receiving executor is proved to have been guilty of *wilful default*, he will be held liable even for money which he has not received. *Styles* v. *Guy.*

Contribution and Recoupment.

Where trustees are held liable for breach of trust, and there is a judgment against all, the trustee making good the breach (unless he is also a beneficiary) may, by *independent action*, have contribution against his co-trustees; but as regards the costs of the action for the breach, a trustee paying the whole has no such right, either for recoupment or contribution.

Usual indemnity clauses are now implied by the Trustee Act, 1893 (repealing similar provisions in Lord St. Leonards' Act). Such clauses, whether express or implied, do not extend to protect a trustee from neglect of *duties.* This protection is only obtained by the insertion of special clauses. *Wilkins* v. *Hogg.*

The Primary Duties of Trustees

are to carry out the directions of the author of the trust and to secure the trust-fund: thus—

(I.) Trustee must be active in reducing choses in action into possession or quasi-possession.

(II.) Trustee must realise moneys outstanding on *personal* security.

(III.) Trustee must invest trust-fund in authorised securities.

The investments open to trustees, executors, and administrators are now regulated by the Trustee Act, 1893.

Under the provisions of this Act (which applies to trusts created before as well as after the Act), a trustee, *unless expressly forbidden* by the trust instrument, is authorised to invest any trust-funds in his hands whether at the time in a state of investment or not, in the following securities:— Parliamentary stocks or public funds, or Government securities of the United Kingdom; real or heritable securities in Great Britain or Ireland; stock of the Bank of England or of Ireland; India $3\frac{1}{2}$ and 3 per cent. stocks; securities the interest of which is for the time being guaranteed by Parliament; consolidated stock of the Metropolitan Board of Works or of the London County Council; debenture stock of the Receiver for the Metropolitan Police District; stock of railway and other companies under restrictions specified in the Act; and in any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control of the court.

And by the Trustee Amendment Act, 1894, trustees are allowed to continue an investment which, since the time of investment, had ceased to be an authorised investment.

Under the term "trustees," executors, administrators, and constructive trustees are included.

"Real securities" do not comprise a *purchase* of lands; but (unless expressly forbidden by the trust instrument) include leasehold property held for an unexpired term of not less than 200 years at a rent not exceeding one shilling, not being subject to any right of redemption or condition for re-entry except non-payment of rent. *Trustee Act*, 1893, s. 5.

(IV.) Trustee must convert terminable and reversionary property comprised in *residuary* devise or bequest, and so protect remainderman and tenant for life.

This should be done within a year from the testator's death. *Brown* v. *Gellatly; Howe* v. *Lord Dartmouth.*

A direction that the income be enjoyed *in specie*, or a discretionary power to convert a reversionary interest, excludes the duty to convert.

Nixon v. *Sheldon.*

(V.) Trustee must, when outstanding inconvertible securities fall in, distinguish between capital and income.

Beavan v. *Beavan; In re Chesterfield's Trusts.*

(VI.) Trustee must give reasonable information as to the trust estate to his *cestui que trust;* but he need not answer the inquiry of a third party as to whether the *cestui que trust* has incumbered his interest. If he does answer the inquiry, he must give what he believes to be a true answer. *Low* v. *Bouverie.*

Liability of Trustee for Non-Investment.

(1.) Where trustee has power to invest in Government *or* real securities, and neglects to do either, he is answerable *only for the principal money and interest*, upon the principle that he is only liable for what the *cestui que trust* must in any event have been entitled to. *Robinson* v. *Robinson.*

(2.) Where trustee has power to invest in Government securities *only*, and neglects to do so, it appears that he is answerable, at the option of the *cestui que trust*, for the principal money and interest at £4 per cent., *or* the stock which might have been purchased at the time when investment should have been made, with subsequent dividends.

(3.) Where trustee sells trust securities for the purpose of making an improper investment, he is bound to replace the stock sold or pay the proceeds of sale at the option of the *cestui que trust.* *Clark* v. *Trelawnay.*

In general, a power in trustees to mortgage the trust estate by implication authorises the insertion of a power of sale in the mortgage.

Trustee carrying on trade of testator by directions in will

is personally liable for debts incurred in so doing, but has a right of indemnity against so much of the estate of the testator as he directed to be so employed. As a consequence, the trade creditors are entitled to stand in the place of the trustee and by means of this right of *subrogation* to claim the benefit of such indemnity; but they have no lien on the assets of the testator which were outstanding at his death.

This rule does not apply where the trustee is in default to the specific trust estate devoted to the trade.

Where the trustee is not authorised by the testator to carry on his trade, the trustee has no such right of indemnity, nor can the creditors have any such right of subrogation.

Remedies of Cestui que trust upon a Breach of Trust.

(1.) Right of action against trustee.

A breach of trust constitutes a simple contract debt only.

The personal liability of trustees is a joint and several liability.

A bankrupt trustee who has obtained his discharge is now released from his liability for a breach of trust unless it be of a *fraudulent* character.

Bankruptcy Act, 1883, s. 30.

And a trustee may take advantage of the Statutes of Limitation in like manner as if he had not been a trustee; except when he has been guilty of *fraud*. The action must therefore be brought within six years from the breach. *Trustee Act*, 1888, s. 8.

(2.) Right of following trust estate into the hands of any alienee, EXCEPT a *bonâ fide* purchaser for value without notice having the legal estate. A purchaser or mortgagee cannot protect himself by taking a voluntary conveyance of the legal estate after notice of the trust.

If a defaulting trustee when bankruptcy is impending makes good the breach out of his own property, the trustee in bankruptcy cannot recover.

(3.) Right of following the property into which the trust-fund has been converted, so long as it can be traced.

Where a trustee mixes trust-money with his own, and the trust-funds are still in his hands, the *cestui que trust* will be entitled to all which the trustee cannot prove to be his own.

(4.) Right of impounding beneficial interest.

Where a trustee, who has committed a breach of trust, is entitled to any beneficial *equitable* interest under the trust instrument, such interest will be *impounded* by the court until the default has been made good.

Dixon v. *Brown.*

The equitable interest of any beneficiary who has participated in a breach of trust may in like manner be impounded, and the right of impounding will rank before a mortgagee of such equitable interest.

Bolton v. *Currie.*

The rule does not apply if the interest be legal and not equitable. *Fox* v. *Buckley.*

Where a trustee is liable for interest in default of investment, the rate is usually £4 per cent., but he will be charged with a higher rate where he—

(1.) Ought to have received more, *e.g.*, if he has improperly called in a mortgage bearing 5 per cent.

(2.) Has actually received more.

(3.) Must be presumed to have received more, *e.g.*, if he has traded with the money, when *cestui que trust* has the option of claiming the trade profits.

(4.) Guilty of direct breaches of trust or gross misconduct.

Remedies of *cestui que trust* against trustee for breach of trust may be barred by—

(*a.*) Concurrence. Persons under disability (who have not been guilty of active *fraud*) are not barred by concurrence; and (prior to the Trustee Act, 1888) even in the case of active fraud, the concurrence of a married woman would not have been a bar when the trust was for her separate use without power of anticipation. *Ellis* v. *Johnson.*

But now under the Trustee Act, 1893, where the breach has been committed at the instigation or request (which need not be in writing), or with the written consent of the beneficiary, the court may (even in the case of a married woman restrained from alienation)

impound the interest of a beneficiary in order to recoup the trustee.

And under the Married Women's Property Act, 1893, a married woman's separate estate, although restrained from alienation, may be made liable for costs of litigation instituted by her.

(*b.*) Acquiescence,
(*c.*) Release,
(*d.*) Confirmation,
} With full knowledge of all the facts of the case, unless under disability. *Brice* v. *Stokes.*

(*e.*) Under the Judicial Trustees Act, 1896, the court may relieve a trustee from liability where he has acted honestly and reasonably and ought fairly to be excused.

Rendering and Settlement of Accounts.

A trustee is bound to render proper accounts, and is entitled to have them examined, and the *cestui que trust*, if satisfied and *sui juris*, ought to close the account or have the accounts taken.

Usually settled accounts are not opened, liberty being given to "surcharge and falsify."

A surcharge is the showing an omission for which credit ought to have been taken.

A falsification is the proving an item to be wrongly inserted.

As a general rule, it need not be shown that the entries or omissions are the result of fraud. *Williamson* v. *Barbour.*

The Trustee Act, 1893 (containing similar provisions to the Trustee Act, 1850, and the Trustee Extension Act, 1852), empowers the Chancery Division to appoint new trustees wherever it is inexpedient, difficult, or impracticable to do so without its aid. It will seldom be necessary to resort to these provisions, as ss. 10–12 of the same Act provide very fully for the appointment of new trustees, and enable separate sets of trustees to be appointed for separate parts of the trust property.

The donee of a power of appointing new trustees cannot appoint himself, because he is deemed to be in a fiduciary position. *Skeats* v. *Allen.*

Further, the Trustee Act, 1893, s. 42 (repeating like provisions

in the Trustee Relief Act, 1847), empowers trustees to transfer the trust-fund into court, to be administered there; but recourse should not be had to this section unless there is a real difficulty in the administration of the trust. The trustee should at once give notice of the transfer to the beneficiaries.

Under the term "trustees," executors and administrators are included, so that legacies and shares of residue will be payable into court under this section.

CHAPTER VII.

DONATIONES MORTIS CAUSÂ.

"A DONATIO MORTIS CAUSÂ is a gift of personal property made by one who apprehends that he is in peril of death, and evidenced by a manual delivery by him, or by another person in his presence by his direction, to the donee or some one else for the donee, of the property itself, or of the means of obtaining possession of the same, or of the writings by which the ownership thereof was created, and conditioned to take effect absolutely in the event of his not recovering from his existing disorder and not revoking the gift before his death."

(*Sm. Man.*, 144.)

The *essentials* of a valid *donatio mortis causâ* are—

(I.) It must be made in expectation of death.

(II.) Conditioned to become absolute only on the donor's death by his existing disorder.

(III.) Actual delivery.

(*a.*) *Writing without delivery* will be construed as testamentary, and therefore void unless Wills Act complied with. It will not operate as a declaration of trust in favour of a volunteer.

(*b.*) *Intentional testamentary* gift, if imperfect, will not be supported as a *donatio mortis causâ*.

Mitchell v. *Smith.*

(c.) *Intentional gift* inter vivos, ineffectual, will not be supported as a *donatio mortis causâ*.

Edwards v. *Jones*.

As to what is a sufficient delivery—

(1.) It must be made to the donee or donee's agent.

Farquharson v. *Cave*.

There must be an actual transfer of the property, and a mere delivery to the *donor's agent* as such will be insufficient. *Trimmer* v. *Danby*.

Where the donor *retains control* over the property, the donee will be considered as the *donor's agent*.

Hawkins v. *Blewitt*.

(2.) It must be actual, or of some effective means of obtaining the property. *Moore* v. *Darton*.

But the delivery (*traditio*) may precede the actual gift. *Cain* v. *Moon*.

It is not absolutely essential that corroborative evidence of the gift should be produced by the donee. *Farman* v. *Smith*.

The following have been allowed to be the subjects of *donationes mortis causâ*:—

A promissory note, bill of exchange, or cheque of a third person payable to order though not indorsed, a deposit note, mortgage deeds, bond, policy of assurance.

The following have not been so allowed:—

Railway stock, donor's cheque, unless cashed or negotiated in his lifetime, title-deeds.

A donatio mortis causâ *differs* from a LEGACY, and *resembles* a gift, *inter vivos*, thus: it—

(1.) Takes effect *sub modo* from delivery in donor's lifetime.

(2.) Requires no assent on the part of the executor.

It *differs* from a gift INTER VIVOS, and *resembles* a legacy, thus: it is—

(1.) Revocable during donor's lifetime.

(2.) Good between husband and wife independently of Conveyancing Act, 1881, s. 50.

(3.) Liable to donor's debts on deficiency of assets.

(4.) Subject to legacy and estate duty.

CHAPTER VIII.

LEGACIES.

A LEGACY is "a gift by will of a chattel." At common law no action could be brought against an executor for a legacy unless he had assented thereto. Equity, however, exercised an exclusive jurisdiction over legacies in the absence of the executor's assent, and a concurrent jurisdiction where such assent had been given, upon the ground that the executor was a *trustee* for the benefit of the legatees.

Legacies have been classified as—

(1.) *General.* A legacy payable only out of the general assets of the testator; *e.g.*, £100, *a* diamond ring.

(2.) *Specific.* A legacy of a particular or specific part of the testator's personal estate; *e.g.*, *my* diamond ring.

(3.) *Demonstrative.* A legacy which is in its nature general, but there is a particular fund pointed out to satisfy it; *e.g.*, £1000 out of my reduced 3 per cents.

Ashburner v. *Maguire.*

Note the following distinctions between them:—

(1.) Upon deficiency of assets a *general* legacy is liable to abatement, but a *specific* legacy is not.

(2.) A *specific* legacy is, however, always liable to ademption; it fails upon an alienation thereof in the testator's lifetime.

(3.) A *demonstrative* legacy is, the most beneficial for a legatee, since it is not liable to—

(*a.*) Abatement with general legacies until the fund out of which it is payable is exhausted.

(*b.*) Ademption by its alienation, the fund pointed out being deemed only the *primary* fund for payment.

In general a legacy given in satisfaction of a debt or in lieu of dower (if testator died seised of lands out of which his widow can claim dower) have priority.

In the case of a legacy of shares, an accretion belongs to the legatee, if declared after the testator's death, not otherwise. As between tenant for life and remainderman accretion declared out of capital will be capital, and out of profits (whether accumulated or not) income.

Legacies Purely Personal.

In construing these, equity follows the rules of the civil law as acted on in the old ecclesiastical courts; thus they—

(1.) Do not lapse by death of legatee before time of payment.

(2.) Carry interest at £4 per cent. as from one year after the testator's decease. *Specific* legacies, however, and *general* legacies given in satisfaction of a debt which carries interest, or to an *infant child* not otherwise provided for, carry interest from the death of testator. A *demonstrative* legacy, like a general legacy, is payable one year after testator's decease, and carries interest from that time.

Legacies Charged on Land.

In construing these, equity follows rules of common law; thus they—

(1.) Although vested, sink for the benefit of the land on death of legatees before time of payment.

(2.) Carry interest at £4 per cent. from testator's decease.

Where a legacy is given to an infant contingent on attaining twenty-one years of age, the income of the investment is available for the interim maintenance of the infant.

CHAPTER IX.

CONVERSION.

CONVERSION has been defined to be "that change in the nature of property by which, *for certain purposes*, real estate is considered as personal and personal estate as real, and transmissible and descendible as such."

The doctrine depends on the *intention* of the testator, settlor, or other author of the trust. When once intention is sufficiently expressed, it does not matter whether conversion has actually been made, for equity considers that done which

ought to be done. The test is—Has the author of the trust absolutely directed the real estate to be turned into personal or the personal estate to be turned into real?

Fletcher v. *Ashburner*; *Lechmere* v. *Carlisle.*

Conversion may be said to arise either by act of the parties, or by title or authority paramount.

Conversion by Act of Parties.

Conversion arises in two ways—

I. Under wills,
II. Under deeds or other instruments *inter vivos*,

} Either in reference to conversion of land into money or money into land.

In every case there must be considered—

1. What words are sufficient to produce conversion.
2. From what time conversion takes place.
3. The general effects of conversion.
4. The results of a total or partial failure of the objects and purposes for which conversion has been directed.

1. *What words are sufficient to produce conversion.* The direction to convert must be clear and *imperative*, which direction may be—

(1.) Express. *Curling* v. *May.*

(2.) Implied. As where (notwithstanding the trustee has apparently an option) the trusts and limitations are exclusively applicable to land, or *vice versâ*.

Earlom v. *Saunders*; *Morris* v. *Griffiths.*

A mere *power*—as distinguished from a *trust*—to convert is not imperative. *Pitman* v. *Pitman.*

2. *Time from which conversion takes place.* The *general* rule is that conversion takes place—

I. Under wills, from death of testator.

II. Under deeds or other instruments *inter vivos*, from date of execution.

"The *principle* is the same in the case of a deed as in

the case of a will, but the application is different, by reason that the deed converts the property in the lifetime of the author of the deed, whereas in the case of a will the conversion does not take place until the death of the testator." *Griffiths* v. *Ricketts.*

The rule is the same, notwithstanding the trust for sale contained in the deed is not to arise *until after* the settlor's death. *Clarke* v. *Franklin.*

And this whether it be a case of conversion of land into money or money into land. *Wheldale* v. *Partridge.*

The rule is *not applicable* where conversion is not the intention, as in the case of mortgage deeds; in such cases there is no *notional* conversion.

Wright v. *Rose*; *Bourne* v. *Bourne.*

Or where a notice to treat is given under the provisions of the Lands Clauses Consolidation Act, 1845, but not duly followed up.

Cases of conversion *depending upon a future option* to purchase vested in some third person must be specially considered: where—

(1.) Option is created by testator *previously* to his will. In the case of—

(*a.*) *General* devise. The property is deemed converted into personalty as from the date of the instrument creating the option.

Lawes v. *Bennett*; *Collingwood* v. *Row.*

Until the option is actually exercised, however, the rents will go as realty. *Townley* v. *Bedwell.*

The rule applies even if the option be not exercisable until after testator's death. *Isaacs* v. *Reginald.*

(*b.*) *Specific* devise. The property is deemed converted into personalty only as from the exercise of the option; the principle being that where the testator, knowing of the existence of the option, devises the *specific* property without reference to such option, he indicates an intention that the devisee should have all his interest therein; either the property or the purchase-money.

Drant v. *Vause*; *Emuss* v. *Smith.*

(2.) Option is created by testator *subsequently* to his will. In the case of—

(*a.*) *Specific* devise. The property is deemed converted into personalty as from the exercise of the option.

Weeding v. *Weeding.*

(*b.*) *General* devise. The same rule will *à fortiori* apply; a specific devisee being always more favoured than a general one.

Where the option is created after the will, there is a suspensory conversion, and a suspensory ademption from the devisee, which subsequently operates or not as a complete conversion and complete ademption, according as the person possessing the option does or does not exercise it.

3. *As to the effects of conversion.* To make real estate personal and personal estate real, although no actual conversion takes place.

(1.) Converted realty devolves on personal representatives, and is subject to legacy and estate duty (formerly probate duty); while converted personalty goes to the heir.

(2.) Converted personalty is subject to curtesy and dower.

(3.) Although prior to Wills Act an infant under twenty-one had power to make a will of personalty, he could not dispose of converted personalty by will.

(4.) It would appear that before the Wills Act a will of converted personalty must have been executed with the formalities prescribed by the Statute of Frauds for wills of realty.

(5.) Converted realty would not formerly have gone to the crown, either by way of escheat or as *bona vacantia*, nor would converted personalty have escheated. It appears that under the Intestates' Estates Act, 1884, there would now be an escheat in all such cases.

4. *Results of total or partial failure* of purposes for which conversion directed.

TOTAL FAILURE.

The *universal* rule is, that where there is a total failure before the instrument directing the conversion comes into

operation, no conversion will take place, but the property will result to the testator or settlor with its original form unchanged. *Clarke* v. *Franklin*; *Smith* v. *Claxton*.

PARTIAL FAILURE.

Three questions will generally arise, namely—

Firstly, To what extent is the trust for conversion still in force?

Secondly, Who is to benefit by the failure?

Thirdly, In what character (realty or personalty) will the benefit accrue?

These questions may be considered under the following heads:—

I. Under wills.

(1.) *Land into money.*

The undisposed-of or lapsed surplus lands or proceeds of sale result to the *heir* of the testator. There must be a gift over to exclude the heir. *Ackroyd* v. *Smithson*.

But this doctrine, in the absence of special circumstances, does not apply to sale by the court.

Steed v. *Preece*; *Hyett* v. *Mekin*.

As to the character in which it is taken—

The true rule appears to be, "where there is a partial undisposed-of interest of real estate directed to be sold, that interest results to the heir of testator, and it becomes *personal estate in his hands*," and the heir "takes the property in the state into which it is converted by the will."

In re Richerson, *Scales* v. *Heyhoe* (following *Jessop* v. *Watson* and *Att.-Gen. Lomas*).

If, however, the trust for conversion is not directed absolutely for all the purposes of the will, but merely for a particular purpose, such as the payment of debts, then the undisposed-of or lapsed surplus lands or proceeds of sale result to the heir *as land*, just as if the conversion had entirely failed.

(2.) *Money into land.*

The undisposed-of or lapsed money results to the next of kin of the testator. *Cogan* v. *Stephens*.

As to the character in which it is taken—

It results to the next of kin as land. The next of kin must take the property in the form in which they *ought* to find it. *Curteis* v. *Wormald* (*overruling Reynolds* v. *Godlee*).

The blending of realty and personalty does not exclude the principle of *Ackroyd* v. *Smithson* and *Cogan* v. *Stephens*. *Jessop* v. *Watson*.

II. Under deeds or other instruments *inter vivos*.

(1.) Land into money, } The property results to the settlor
(2.) Money into land, } in its *converted* form.

Griffiths v. *Ricketts*; *Wheldale* v. *Partridge*; *Clarke* v. *Franklin*.

It will be remembered that the reason of the distinction between the result of a partial failure under a will and a deed is, a will operates from the death of the testator, but a deed takes effect in the *settlor's lifetime*.

Conversion by Title or Authority Paramount.

In the consideration of conversion by act of parties the question at issue has been, What was the intention of the author of the trust? Under this head, however, conversion takes place without reference to any wish or intention on the part of the owner of the property. The question to be considered being, "Is the property, though *de facto* converted, to be treated to any and what extent as not converted?"

The chief instances are—

I. *Lands taken under powers conferred by Act of Parliament*, in which the point is, What is the intention, *i.e.*, what are the words, of the statute? Statutes must, however, be construed so as to vary as little as possible the rights of third persons.

Richards v. *Attorney-General of Jamaica*.

Persons whose lands are taken from them by parliamentary authority may be classified thus:—

(1.) Absolute owners who, under parliamentary compulsion,

contract for the sale of their land. The land is converted from date of contract.

(2.) Absolute owners who refuse to contract. In spite of such refusal the sale is completed and purchase-money paid into the Bank of England under the 76th section of the Lands Clauses Consolidation Act, whereby a conversion is effected forthwith.

(3.) Limited owners and persons under disability. The purchase-money is paid into Court under the 69th section of the Lands Clauses Consolidation Act, until a reinvestment in land can be effected, and meanwhile there is *no* conversion.

In the consideration of this head, note the provisions of the Settled Land Acts, whereby full power is given to limited owners while in possession to effect sales; the purchase-money, however, being still considered *land* in the contemplation of equity.

II. *Lands sold under the authority of the Court.*

When lands have been sold by direction of the court, there is a conversion out and out, even though the purposes of the sale do not exhaust all the proceeds. "The true principle is this, that the moment a sale is *properly* made conversion follows, and there is no equity to reconvert the surplus."

Stead v. *Preece; Hyett* v. *Mekin.*

CHAPTER X.

RECONVERSION.

RECONVERSION is that notional or imaginary process by which a prior constructive conversion is annulled and taken away, and the constructively converted property restored in contemplation of a court of equity to its original actual quality.

Reconversion may take place in two ways:—

A. By the act of the parties.

B. By operation of law.

Reconversion by Act of Parties.

The principle of this doctrine is the *right* of every absolute owner *to elect* to dispense with the execution of any trust in the performance of which he alone is interested.

Reconversion, therefore, depends upon the right of election, and may be considered under the two following heads. (*Haynes' Eq.*, 366.)

I. Who may elect so as to effect a reconversion, and to what extent.

(1.) *Absolute* owner may reconvert; but onus of proof will be on those who allege that he has done so.

(2.) Owner of *undivided* share of—

(*a.*) Money to be converted into land: undivided owner may reconvert. *Seeley* v. *Jago.*

(*b.*) Land to be converted into money: undivided owner may *not* reconvert, for the sale of an undivided share would be less beneficial than share of proceeds of entirety. *Holloway* v. *Radcliffe.*

(3.) *Remainder*-man may reconvert to the extent of his own interest only, that is to say, as between his own real and personal representatives.

Triquet v. *Thornton*; *Gillies* v. *Longland.*

(4.) *Infant* cannot reconvert usually. If matter won't wait, the court will elect, but without prejudice to the diverse rights of the real and personal representatives of the infant dying under age.

(5.) *Lunatic* cannot reconvert. His committee may do so with sanction of court, but without prejudice to the rights of lunatic's representatives. Under the Lunacy Act, 1890, property of a lunatic may be sold, but unapplied purchase-moneys will devolve as real estate.

(6.) *Married women*, independently of the operation of the Married Women's Property Act, 1882, cannot elect by ordinary deed. As to—

(*a.*) Money to be converted into land.

(*a.*) Formerly a married woman effected a reconversion by being examined in open court.

Oldham v. *Hughes.*

Or by making sham purchases of land, and then levying a fine with concurrence of husband.

(β.) Now she reconverts by means of a deed acknowledged. 3 & 4 *Will. IV.* c. 74.

(*b*.) Land to be converted into money.

(α.) Formerly a married woman effected a reconversion by levying a fine with concurrence of her husband. *May* v. *Roper.*

(β.) Now she reconverts by means of a deed acknowledged under 3 & 4 Will. IV. c. 74.

Briggs v. *Chamberlain.*

Even if her interest be in reversion or remainder.

Tuer v. *Turner.*

But if she is entitled to the property as separate estate, an acknowledged deed is not necessary.

But since the Married Women's Property Act, 1882, it would appear that a married woman has the same power to elect so as to effect a reconversion of her *separate* property as if she were a *feme sole.*

II. Mode in which the election may be made.

(1.) By express direction.

(2.) By implied direction, from conduct. As to—

(α.) Land to be converted into money, slight circumstances are sufficient to effect a reconversion.

Davies v. *Ashford.*

(*b*.) Money to be converted into land. Slight circumstances are insufficient; but it is enough if the court is satisfied the party means the money to be taken as such.

Reconversion by Operation of Law.

There are two essentials to this reconversion.

(1.) The property must be in the actual possession of the person who had in himself both the executors and the heirs.

And

(2.) That person must have made no declaration of his intention concerning it.

When these two things are proved, the onus of proof to the contrary rests on the party denying reconversion.

Chichester v. *Bickerstaff*; *Pulteney* v. *Darlington*.

Where the property is *at home*, that is to say, in the possession of the person under whom both executor and heir claim, the heir cannot take it; but if it be outstanding in the hands of a third party, or if any outstanding partial interest stand in the way, he possibly may do so.

Wheldale v. *Partridge*; *Wallrond* v. *Rosslyn*.

CHAPTER XI.

ELECTION.

ELECTION has been defined as "the choosing between two rights where there is a clear intention that both were not intended to be enjoyed."

The commonest application of the doctrine is where a person having by any instrument in terms disposed of the property of another, has by the same instrument given property of his own to that other; in such a case a condition is implied that the donor's gift of his own property is to be absolute only upon the donee's ratification of the attempted disposition of his (the donee's) property to a third person.

The FOUNDATION of the doctrine is the *intention* of the author of the instrument, and its *characteristic* is the effectuation of a gift made by a donor of property not belonging to him.

Dillon v. *Parker*.

The doctrine, although professing to be based on intention, seems to be really independent of it, for an intention is *presumed* "on the part of the author of every instrument that all persons deriving benefits under that instrument shall be bound to give effect to all dispositions thereby made of their own property, and no evidence will be allowed to be given to show that such presumed intention could not really have existed."

(*Haynes' Eq.*, 265.)

> The doctrine of election is doubtless derived from the civil law, from which, however, it differs in one important particular, namely, in applying the principle to those cases in which the author of the instrument disposes of property under the erroneous impression that it is his own.
>
> *Whistler* v. *Webster.*

In order to raise a case of election two essential circumstances must concur.

I. Property which belongs to one person, A, must be given to another by the author of the instrument.

And

II. The donor must at the same time give property of *his own* to A.

In such a case of concurrence, A will be put to his election, and will have two courses open to him—

(1.) Election under the instrument, and consequent submission to all its terms.

(2.) Election against the instrument, in which case the question arises as to whether *compensation* or *forfeiture* on the part of the refractory donee is to result. The rule has been settled thus—

(*a.*) Equity sequesters the benefits intended for the person electing against the instrument in order to *compensate* him whom this election has disappointed.

(*b.*) The surplus after compensation is restored to the refractory donee. *Gretton* v. *Haward.*

No case for the doctrine of election arises where testator—

(1.) Simply makes two dispositions of *his own* property in the same instrument.

(2.) Does not dispose of some property *actually his own* so as to furnish a fund from which compensation can be made. *Bristow* v. *Warde*; *Whistler* v. *Webster.*

Cases of Election under Special Powers.

These cases may be summarised—

(1.) Person entitled *in default* of appointment is put to his election.

(2.) Person entitled *under* the power is *not* put to his election, for no property *belonging* to him has been given to another, since the person *entitled in default* of appointment is the *owner* of the property improperly appointed to another not an object of the power. *Whistler* v. *Webster.*

(3.) Where directions modifying the appointment are appended.

(*a.*) When modification is contrary to law (*e.g.*, infringes the rule against perpetuities), it is altogether invalid, and no case of election is raised.

Woolridge v. *Woolridge.*

(*b.*) When modification is not contrary to law *and* clear and imperative, a case of election is raised.

White v. *White*; *Blacket* v. *Lamb.*

Cases of Election arising from Attempts of Testator to dispose of his own Property by Ineffectual Instrument.

(1.) Infancy. Previously to the Wills Act, an infant could by will dispose of personal estate, but not real estate; under such a will there was no case of election.

(2.) Coverture. Where testatrix is incompetent to make a will through coverture; there is no case of election.
Since Married Women's Property Act, 1882, these cases can seldom arise.

(3.) Under old law before Wills Act—

(*a.*) Where will *not properly attested* to pass freeholds; the heir was not bound to elect.

(*b.*) Where will *properly attested*, but testator attempted thereby to dispose of after-acquired property; the heir was put to his election.

(4.) Under law previous to Preston's Act (55 Geo. III. c. 192), copyholds must have been surrendered to the use of his will before a testator could thereby dispose of them. Where devise was made of unsurrendered copyholds, the heir was put to his election.

(5.) Scotch property. Where will is not properly executed to pass Scotch property, the Scotch heir will be put to his election. *Brodie* v. *Barry*; *Orrell* v. *Orrell.*
The same rule will apply to foreign lands generally.

(6.) Derivative interest. Where a person is only derivatively entitled under another who was bound to elect and has done so; there is no case of election. *Cooper* v. *Cooper.*

Cases of Election in Respect of Dower

where the Dower Act (3 & 4 Will. IV. c. 105) does not apply, for under that Act dower raises no case of election. The widow will be put to her election—

(1.) At law. By express words.

(2.) At equity.

(*a.*) By express words.

(*b.*) By necessary implication, to constitute which the provisions of the instrument must be clearly inconsistent with her dower being assigned by metes and bounds. *Butcher* v. *Kemp.*

In all cases, in order to raise a case of election, there must appear *on the instrument* itself a *clear intention* on the part of the testator to dispose of property *not his own.* Where, therefore, a testator has a limited interest, he is presumed to have given his own property only, and any general words used will be deemed to apply to such property as he is capable of disposing of by his will. *Wintour* v. *Clifton ; Johnson* v. *Telfourd ; Shuttleworth* v. *Greaves ; Dummer* v. *Pitcher.*

The intention must in all cases appear on the instrument itself, and extrinsic evidence will not be admissible to raise a case of election. *Clementson* v. *Gandy.*

Mode of Election.

(1.) By married women.

(*a.*) As to realty, by deed acknowledged under 3 & 4 Will. IV. c. 74.

(*b.*) As to personalty, by direction of the court after inquiry made, except as to reversionary interests, in respect of which election may be made by deed acknowledged under Malins' Act (20 & 21 Vict. c. 57).

So far as her *separate* property is concerned, can elect in the same way as if she were a *feme sole.*

Re Quæde's Trusts.

Except where she is restrained from anticipation, in which case she can only elect with the aid of the court, under s. 39 of the Conveyancing Act, 1881.
In re Vardon's Trust.

(2.) By infants.
  (*a.*) Generally by direction of the court upon inquiry made.
  (*b.*) In other cases the election is deferred until the infant comes of age. *Streatfield* v. *Streatfield.*
(3.) By lunatics. By direction of the court upon inquiry made.
(4.) Generally.
  (*a.*) By express words.
  (*b.*) By implication, as a result of conduct and dealing with the property. But acts to be binding must be done with *intention* of electing.

Persons bound to elect may previously ascertain the relative values of the two properties between which they are called upon to choose.

Neglect to elect within a limited time will generally imply an election to take against the instrument.

Observe the different sense in which the word *election* is used, as regards the doctrine of election, to that in which it is used, in treating of *reconversion.* Here it is "the *obligation* to elect between two species of property or benefit, while in reconversion it is *the right* to elect to take, in lieu of the proceeds or fruit of any given property, the property itself."
(*Haynes' Eq.* 367.)

CHAPTER XII.

PERFORMANCE.

THE doctrine of performance is based upon the maxim, "Equity imputes an intention to fulfil an obligation."

Two classes of cases occur—

I. Where there is a covenant to *purchase* and settle realty, and a purchase but no settlement is made.

II. Where there is a covenant to *leave* personalty, and the covenantee receives a share under an intestacy.

I. *Covenant to purchase and settle.* This class is well illustrated by the cases *Lechmere* v. *Carlisle* and *Wilcocks* v. *Wilcocks*, under which four points have been established—

(1.) Performance may be good *pro tanto* where lands purchased are of less value than covenanted.

(2.) Lands purchased before covenant entered into — no performance.

(3.) Lands purchased which do not answer description of covenant—no performance.

(4.) Absence of trustees' consent immaterial.

Sowden v. *Sowden.*

Note, a covenant to settle creates a mere *specialty debt*, and not a *lien* upon the lands.

This class must be distinguished from cases depending upon the right of *cestui que trust* to follow trust-fund into any subject-matter into which it has been wrongfully converted. In these cases all turns on the circumstance that the purchase has been in fact made with *trust-money.*

Trench v. *Harrison; Lench* v. *Lench.*

II. *Covenant to leave.* Where husband, having covenanted to leave his wife money, dies intestate, so that she becomes entitled to a share under the Statute of Distributions, the question arises whether such share is a performance of the covenant, or whether she can claim in addition the money due thereunder. Two rules apply—

(1.) When the husband's death occurs *at or before* time covenant ought to be performed, so that during husband's lifetime there is no breach of covenant and no debt—distributive share is a performance either *in toto* or *pro tanto.*

Blandy v. *Widmore; Goldsmid* v. *Goldsmid.*

(2.) When husband's death occurs *after* time covenant ought to be performed, *i.e.*, after a breach—distributive share is no performance. *Oliver* v. *Brickland.*

CHAPTER XIII.

SATISFACTION.

SATISFACTION has been defined as "the making of a donation with the intention, express or implied, that it shall be taken as an extinguishment of some claim which the donee has on the donor."

The doctrine rests upon *intention*, but must not be confounded with performance, in which the *identical* thing agreed to be done is considered to have been done, while in satisfaction the thing done is something different from and *substituted* for the thing agreed to be done.

Cases on this doctrine may be considered under four heads, viz., satisfaction of—

I. Debts by legacies.
II. Legacies by subsequent legacies.
III. Legacies by portions.
IV. Portions by legacies.

I. *Satisfaction of debts by legacies.*

The general rule is, that a man must be just before he is generous, the maxim being *Debitor non presumitur donare.* But equity leans *against* this presumption of satisfaction, and the following special rules have been laid down:—

(1.) A legacy imports a *bounty.*

(2.) Legacy equal to or greater than debt and given *simpliciter* —satisfaction. *Talbot* v. *Shrewsbury.*
A legacy exactly equal to a debt is adeemed by the discharge of the debt. *Gillings* v. *Fletcher.*

(3.) Legacy less than debt—no satisfaction, even *pro tanto.*

(4.) Debt contracted *after* will—no satisfaction.

(5.) Slight circumstances rebut the equitable presumption of satisfaction; such as—
(*a.*) Where the will contains an express direction for payment of debts and legacies,
or debts only, *Chancey's Case.* / *Bradshaw* v. *Huish.* } no satisfaction.

(*b.*) When legacy is made payable *after* debt—no satisfaction. *Clarke* v. *Sewell.*
But when payable *before* debt—a satisfaction. *Wathen* v. *Smith.*

(*c.*) Where legacy is contingent or uncertain—no satisfaction. *Barrett* v. *Beckford*; *Devese* v. *Pontet.*

Using the term *less* in the sense familiar to the civil law, it may be said generally, there is no satisfaction when the legacy is less than the debt.

II. *Satisfaction of legacies by subsequent legacies.*
Two cases occur, namely, where the legacies are given by the same or by different instruments.

Firstly, Under the same instrument.
(1.) Equal legacies given to the same person *simpliciter* are *substitutive.* *Greenwood* v. *Greenwood.*
(2.) Unequal legacies are *cumulative.* *Hooley* v. *Hatton.*

Secondly, Under different instruments.
(1.) Equal or unequal legacies given to the same person *simpliciter* are *primâ facie* cumulative.
(2.) Where legacies are not given *simpliciter*, but a motive is expressed, then when in EACH instrument there is both the *same* motive AND the *same* sum, they are substitutive. *Benyon* v. *Benyon.*

As to extrinsic evidence, it is—
(*a.*) Admissible in *support* of will where the court itself *raises* the presumption of satisfaction.
(*b.*) Not admissible to *contradict* will where the court does *not* raise such presumption.

III. *Satisfaction or ademption of legacy by* PORTION, *e.g.*, where father first gives his child a legacy and subsequently makes other provision for it.

IV. *Satisfaction of* PORTION *by legacy, e.g.*, where father *agrees* to make provision for a child and afterwards gives it a legacy. "In each of these cases the rule of the court is, that benefits given to the child by the second instrument, settlement, or will, as the case may be, are to be viewed

as a satisfaction of the benefits conferred by the first, whether will or settlement."

The foundation of the doctrine is the parental relation, or its equivalent.

Note, where a parent gives a legacy to a child *simpliciter*, the court understands him as giving a PORTION.

Pym v. *Lockyer.*

A portion means "something given to establish a child in life." *Taylor* v. *Taylor.*

When the *will* comes *first* and the settlement afterwards, the term *ademption* is used instead of satisfaction.

Coventry v. *Chichester.*

With regard to both these cases (III. and IV.) the following points should be noted:—

(1.) In the case of double provisions, the doctrine of satisfaction only applies where the *parental* relation, or its equivalent, exists. But

(*a.*) An *illegitimate* child is a *stranger* in the eye of the law, and will therefore be entitled to both provisions. *Ex parte Pye.*

Where, however, the case is a mixed one of *children* and *strangers*, the shares of the strangers will not be increased by the satisfaction of the children's shares.

Meinertzhager v. *Walters.*

(*b.*) Even between *strangers*, where *both* provisions are expressed to be made for the *same* particular purpose, there is a satisfaction. *Monck* v. *Monck.*

The presumption against double provisions is said to be founded on good sense. If the parental relation exists, the court, from its knowledge of the ordinary dealings of mankind, concludes that the parent does not mean to doubly provide for any one of his children. As between strangers, there is no reason within the knowledge of the court for regarding the second benefit to be a satisfaction of the first.

Suisse v. *Lowther*; *Lawes* v. *Lawes.*

(2.) Although the doctrine does not, as a general rule, apply between strangers, yet it does apply where the donor has placed himself *in loco parentis* towards the beneficiary.

As to what is putting one's self *in loco parentis*, the expression may be taken to mean "a person *meaning* to put himself *in loco parentis* with *reference* to the office and duty of the parent to make provision for the child." *Powys* v. *Mansfield.*

Under this rule an *illegitimate* child may be deprived of the double benefit to which he might otherwise be entitled as a consequence of the first rule.

(3.) Equity leans most strongly *against* double provisions and in favour of satisfaction. In the case of *debts* and legacies the leaning was in the contrary direction.

Consequently, slight circumstances will not rebut the equitable presumption of satisfaction: *e.g.*, the doctrine applies even though the sums be different in amount or payable at different times. The doctrine even applies where there is a difference in the mode of limitation for the benefit of the child, and also where the benefit conferred by the second instrument is not of any distinct or definite sum, whether—

(*a.*) The will precedes the settlement,

Durham v. *Wharton*; *Montefiore* v. *Guedalla.*

or

(*b.*) The settlement precedes the will. *Thynne* v. *Glengall.* In this latter alternative it must always be remembered—

(*a.*) The parties claiming under the *settlement* are *quasi-purchasers*, and, as such, cannot be deprived of their rights upon any presumed intention of the testator. At the utmost they can only be put to their *election* whether to take under the settlement or the will. *Chichester* v. *Coventry.*

(*β.*) The question of satisfaction cannot arise as regards advances *actually made* upon a settlement, but only in respect of those *agreed* to be made.

But where under a special power an appointment is made by will to all the members of a class, and afterwards an appointment is made by deed to one member of a portion of the fund—there is no satisfaction.

Ingram v. *Papillon.*

(4.) Where the sum given by the settlement is less than that previously given by the will, the less sum is a satisfaction *pro tanto* only. *Pym* v. *Lockyer.*

Where the settlement precedes the will, the question cannot in practice arise, for the parties claiming under the first instrument are *purchasers.*

(5.) Where a *parent* makes provision for a child to whom he is already *indebted*—

(*a.*) "A *legacy* does not (except when it would do so between strangers) operate as a satisfaction of the debt." *Stocken* v. *Stocken.*

(*b.*) An *advancement* made upon marriage or otherwise will *primâ facie* be considered a satisfaction.

Wood v. *Briant; Plunkett* v. *Lewis.*

And *e converso* where a child is indebted to his father and the father forgives the debt, such a transaction will be deemed an advancement. *Blockley* v. *Blockley.*

But small sums are not construed as advances.

(6.) As to extrinsic evidence, the rule as to satisfaction being a presumption of law may be rebutted by evidence not contained in the written instruments themselves. Such evidence is admitted only for the purpose of ascertaining whether the presumption which the law has raised be well or ill founded. Thus it is—

(*a.*) Not admissible to *vary* or *contradict* the plain effect of instruments where *no presumption of law* against double provisions is raised in the first instance.

Hall v. *Hill.*

(*b.*) Admissible to *confirm* the plain effect of instrument where such *presumption of law* is raised.

Kirk v. *Eddowes.*

CHAPTER XIV.

ADMINISTRATION OF ASSETS.

THE word "assets" is derived from *assez*, enough. "The primary meaning of 'assets' was not that so much property was applicable for the payment of the debts, but that the personal

representative as to the personal estate and the heir as to the descended real estate were respectively held *personally* liable for the debts at the suit of the creditors, the amount of the personalty vested in the one and the value of the realty descended to the other being the measure of their respective liabilities." (*Eddis on Assets.*)

Assets have accordingly been divided into "real assets," or "assets by descent," and "personal assets," or *assets entre main* of an executor. From the primary meaning, the word "assets" has now come to mean "all property available for the payment of the debts of a deceased person."

Assets are subdivided into two great classes—*legal assets* and *equitable assets.*

Legal assets denote "property which *creditors* might make available in a court of law for the payment of debts as having devolved upon or been recoverable by the executor or administrator, as such, for that purpose, simply by virtue of his office, even though the property might be of an equitable nature, and he had consequently been obliged to resort to a court of equity to vest it in himself."

Equitable assets denote property which *creditors* could make available only in a court of equity for payment of debts by virtue of an express disposition of the property, or, from its peculiar nature, which must have been carried into effect or administered by a court of equity.

(*Sm. Man.*, 331) *Cook* v. *Gregson.*

It is therefore the REMEDY OF THE CREDITOR which determines whether the assets are legal or equitable.

The distinction between the two was formerly important and consisted in this—that out of legal assets specialty debts were properly payable before the simple contract debts, while out of equitable assets both classes of debts were payable *pari passu.*

This distinction has lost most of its importance since the 1st January 1870, as will hereafter appear. It is still of moment in questions as to

(1.) Executors' or administrators' right of retainer.

(2.) Remedy of creditor against executor in an action at law.

Prior to the 1st January 1870 the following was the

Order in which Debts were Payable out of LEGAL *Assets.*

Reasonable funeral and testamentary expenses are payable first of all.

(1.) Debts due to the crown by record or specialty.

(2.) Debts to which particular statutes give priority; *e.g.*, debts owing to building or friendly societies by their officers, income-tax, poor-rates.

(3.) Judgments duly registered against the deceased, and unregistered judgments if recovered against the personal representatives. The reason for the necessity of registration is to prevent the risk which the personal representatives would otherwise run of committing a *devastavit* by paying debts of inferior degree without being aware of judgments.

(4.) Recognisances and statutes.

(5.) Specialty debts for valuable consideration, whether the heir be or be not bound, arrears of rent, even though reserved by parol, ranking equally with specialties. This last priority is said to have arisen from what is called in law *privity of estate.*

(6.) Simple contract debts and unregistered judgments against the deceased. But debts due to the crown by simple contract would be paid first.

(7.) Voluntary bonds or covenants; but a voluntary bond assigned for value in the lifetime of the deceased ranks equally with specialty debts, *i.e.*, in the fifth group.

The order in which the different species of debts have always been payable out of EQUITABLE assets is obtained by bracketing together groups 5 and 6; and Hinde Palmer's Act (32 & 33 Vict. c. 46, now styled "The Administration of Estates Act, 1869") abolished the priority of specialty over simple contract debts in the administration of the LEGAL assets of persons dying on or after 1st January 1870, thus putting both on the same footing wherever the Act applies.

This statute does not deprive the crown of its priority, so where the crown is simple contract creditor, the assets must be divided rateably between the specialty and simple

contract creditors, and then the crown will be paid first out of the proportion allocated to the simple contract debts.

Re Bentinck.

The above is the "due order of administration;" but an executor, *before* judgment in administration action, when no receiver has been appointed or injunction obtained, may prefer one creditor to another, or even pay a statute-barred debt. To prevent this, it is necessary to obtain

(*a.*) An injunction;

or (*b.*) Appointment of receiver before judgment; but a receiver will not be appointed by the court merely to prevent an executor exercising this right.

Molony v. *Brooke.*

or (*c.*) Speedy consent judgment for administration, but this can only be obtained with great difficulty.

Lane v. *Lane; In re Wilson.*

But the issue of an originating summons will check the executor's action so far as regards any question raised by the summons. *Hunt* v. *Wenham.*

Administration of Real Estate.

It may be well to trace here the gradual process by which real estate was rendered liable to the payment of debts, and the following points should be noted:—

(1.) In early times creditors by simple contract or specialty not binding the heir had no remedy against real estate, and even if the heirs were bound, the debtor might devise his lands to another, who would be under no liability to pay the debt; or the heir might dispose of the descended lands before action brought against him by the creditor, who would in that event have no claim either on the lands or the purchase-money.

(2.) The Statute of Fraudulent Devises (3 Will. & Mary, c. 14) made devises void against specialty creditors where the heirs were bound, and gave such creditors an action of *debt* against the heir *and* devisee jointly.

(3.) Sir Samuel Romilly's Act (47 Geo. III. c. 74) enacted that the fee-simple estates of a deceased *trader* within

the Bankruptcy Laws should be assets to be administered in equity for payment of his *simple contract* as well as *specialty* debts.

(4.) The 11 Geo. IV. and 1 Will. IV. c. 47, repealed the former Acts, but re-enacted them with variations; in particular, providing that creditors might bring an action of debt *or* covenant against the heir *or* devisee.

(5.) The Administration of Estates Act, 1833 (3 & 4 Will. IV. c. 104), provided in effect that all the real estate of any deceased person (trader or non-trader) should be assets to be administered in equity for payment of his *simple contract* as well as *specialty* debts; but preserved the priority of creditors by specialty, in which the heirs were bound over the creditors by simple contract, or specialty in which heirs were not bound.

(6.) The Administration of Estates Act, 1869, in effect abolished the distinction between specialty and simple contract debts, and thus the priority preserved by the Administration of Estates Act, 1833, disappeared.

(7.) It should be noted that none of the foregoing statutes interfered with testamentary dispositions providing, either by way of trust or charge, for payment of debts.

Such dispositions constituted the lands *equitable assets* out of which the creditors were paid *pari passu*.

Legal assets include lands not charged with the payment of debts, estates *pur autre vie*, equity of redemption of leaseholds, as well as freeholds.

Equitable assets have been classified as of two kinds—

1stly. Equitable assets which are so by virtue of their own nature, not attainable by executor *virtute officii*, consisting of

(*a.*) Property actually appointed by testator under a general power. Where the appointor is a married woman, such assets will be liable for her post-nuptial as well as her ante-nuptial debts, if contracted with reference to her separate estate.

Willoughby v. *Holyoake*; *Bell* v. *Stocker*.

(*b.*) Separate estate of a married woman.

2ndly. Equitable assets so created by the act of the testator charging or devising his land for payment of debts.

Note—

(1.) The distinction between a charge and a trust. A *trust* imposes a duty on the trustee to look after the creditor, who will not be barred by lapse of time.

Judicature Act, 1873, s. 25, subject to the *Trustee Act*, 1888 (*vide ante*, pp. 40 and 44).

While a creditor who has only a *charge* in his favour must look after himself, and will be barred after lapse of twelve years. 37 & 38 *Vict.* c. 57.

But a trust of *personal* estate (which is primarily liable for debts), created by WILL only, does not prevent the Statute of Limitations running.

Observe, the Statutes of Limitations, 21 Jac. I. c. 16, and 3 & 4 Will. IV. c. 42, bar the remedy only, but do not extinguish the right; while the statutes 3 & 4 Will. IV. c. 27, and 37 & 38 Vict. c. 57, not only bar the remedy but extinguish the right or debt itself. When once a debt is barred under these last-named statutes, no acknowledgment will revive it, and an executor must not pay a debt which has been wholly extinguished under the last-mentioned statutes.

An executor is not bound to plead the Statute of Limitations, but must not pay a statute-barred debt after judgment for administration.

(2.) What amounts to a charge.

A mere general direction by a testator that his debts should be paid was held to constitute a charge upon the real estate. *Silk* v. *Prime*; *Legh* v. *Warrington*.

To this rule there were two exceptions—

(*a.*) Where a particular fund specified by testator for payment of debts.

(*b.*) Where *executors*, to whom real estate had not been devised, were directed to pay debts.

A specific lien upon real estate will not be affected by a general charge of debts, but neither specialty nor simple contract debts constitute such a lien. If, however, an action for administration has been commenced and registered as a *lis pendens*, a purchaser would not be safe in completing.

By the Judgments Act, 1864 (27 & 28 Vict. c. 112), judgment debts, although duly registered, do *not* constitute a lien or charge upon the debtor's lands *until* such lands shall have been actually delivered in execution by virtue of a writ of elegit, or other lawful authority. The appointment of a receiver would amount to an equitable execution, *i.e.*, such a delivery by a legal authority as the subject-matter admits of; *Hood Barrs* v. *Cathcart*; *Wells* v. *Kilpin*.

and this is so even where the subject-matter is a legal interest, and as such capable of being delivered in execution under a writ of elegit. *In re Pope*.

But under the Land Charges Act, 1888, the writ of elegit or receivership order must be registered in order to affect purchasers.

Effect of Judicature Acts.

By the Judicature Act, 1875, s. 10, it is enacted that "in the administration BY THE COURT of the assets of any person who may die AFTER the commencement of this Act (1st November 1875), and *whose estate may prove to be insufficient for the payment in full of his debts and liabilities*, ... the same rules shall prevail and be observed as to *the respective rights of secured and unsecured creditors*, and as to *debts* and *liabilities provable*, and as to *the valuation of annuities and future and contingent liabilities* respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt."

Accordingly the rules in bankruptcy, instead of the previously existing rules of equity, are adopted whenever the insolvent estate of a person dying after 1st November 1875 is administered by the court, in three particulars—

(1.) As to the respective rights of secured and unsecured creditors.

(2.) As to debts and liabilities provable.

(3.) As to the valuation of annuities and future and contingent liabilities.

With reference to this section, note that it *only applies* to—

(*a.*) Insolvent estates. If an estate being administered as an insolvent estate turns out to be solvent, the section will not apply.

(*b.*) Estates administered by the court.

(*c.*) A limited extent, not importing *all* the rules of bankruptcy, but only those relating to the three particulars above specified.

(1.) *As to Secured and Unsecured Creditors.*

The Bankruptcy Act, 1883, s. 168, defines a *secured creditor* to be "a person holding a mortgage charge or lien on the property of the debtor, or any part thereof, as security for a debt due to him from the debtor."

The rule in equity as to secured creditors prior to the Judicature Act, 1875, was that the creditor might, in addition to his rights under his security, prove for the *whole* amount of his debt against the estate. *Mason* v. *Bogg.*

In bankruptcy the rule was the reverse, and under the Bankruptcy Act, 1883, the secured creditor may either—

(*a.*) Prove for his whole debt on surrendering his security, or

(*b.*) Prove for the balance due after realising or giving credit for the value of his security.

The better opinion as to the precise effect of the Judicature Act, 1875, is to view it as extending only to the *relative rights* of secured and unsecured creditors. *Lee* v. *Nuthall.*

A judgment creditor does not become a secured creditor merely by obtaining the appointment of a receiver.

In re Dickinson.

The execution (whether legal or equitable) must be duly followed up to render the judgment creditor secure.

(2.) *As to Debts and Liabilities Provable.*

Under the Bankruptcy Act, 1883, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject, are provable in the bankruptcy, but any provable debt or liability may be declared by the court to be incapable of fair estimation, in which case it ceases to be a provable debt. The Preferential Payments in Bankruptcy Act, 1888 (which repeals sect. 40 of the Bankruptcy Act, 1883), provides that on a winding up or a bankruptcy (including in this term the administration of the estates of deceased insolvents, whether

by the Bankruptcy or Chancery Divisions) the following classes of debts to the extent specified in the Act are given priority over all others :—

(*a.*) Parochial and local rates and assessed taxes.

(*b.*) Wages and salaries of clerks and servants.

(*c.*) Wages of labourers and workpeople.

But the Judicature Act, 1875, in speaking of the "debts and liabilities provable," said nothing about their "priorities" *inter se ;* and the rules of bankruptcy limiting the landlord's right of distress, or as to reputed ownership or the avoidance of voluntary settlements, have no application to administration by the Chancery Division.

By the Preferential Payments in Bankruptcy Amendment Act, 1897, the debts mentioned in the Preferential Payments Act of 1888 are given preference over the claims of debenture holders on the winding up of a company or the appointment of a receiver for debenture-holders.

(3.) *The Valuation of Annuities and Future and Contingent Liabilities.*

By the Bankruptcy Act, 1883, the trustee is to make an estimate of the value of any provable debt or liability which does not bear a certain value ; and the rules in force in bankruptcy as to such estimate apply in the administration of assets in equity. *In re Bridges, Hill* v. *Bridges.*

Insolvent estates of deceased persons may now, under the 125th section of the Bankruptcy Act, 1883, be wholly wound up in bankruptcy, and proceedings for administration commenced in the Chancery Division *may* be transferred to the Bankruptcy jurisdiction, even after decree, either on the application of a creditor or without any such application ; but not as a matter of course. *Atkinson* v. *Powell.*

Creditor's Action for Administration of Deceased Debtor.

Under Order lv. r. 10, the court has a discretion as to granting or refusing general administration, and now, as a rule, makes an order for limited administration, restricting the accounts and inquiries to what is indispensable.

I. Personal estate.

(1.) In ordinary cases; an account is directed of debts and expenses and of the personal estate received and outstanding. The executor is allowed in his account his testamentary expenses and all just allowances, and neither of these need be specified in the judgment.

After judgment the executor should not exercise his powers without sanction of the court. The judgment operates for the benefit of all the creditors of the deceased who prove under it. When the estate is insolvent, interest is only allowed in accordance with the rule in bankruptcy.

(2.) In partnership cases; the judgment would commence with a declaration that all the creditors of the deceased are entitled to the benefit of the judgment, and that the surplus (after payment of funeral expenses and separate debts) is liable to the joint debts. It would proceed to direct an account of the funeral expenses, of the separate debts, and the joint debts, and an inquiry as to the amount of the personal estate of the deceased.

II. Real and personal estate.

After the usual accounts the judgment would direct (in case the personal estate should prove insufficient) an inquiry to be made as to the real estate of the testator, and the incumbrances affecting the same, and then order a sale thereof, the proceeds to go in aid of the personal estate in payment of debts, &c.

A judgment for administration is a judgment against the estate whenever realised for the benefit of all creditors who come in under it.

If an executor administer the personal estate either under the direction of the court or the provisions of 22 & 23 Vict. c. 35, he is not personally liable to any claims of creditors of which he has no notice that may be made subsequently; but if otherwise, he remains liable to any unpaid creditor, having the right, however, of calling upon the residuary legatees or next of kin to refund.

Legatees and devisees are *postponed* to creditors, but being express objects of the testator's bounty, are *preferred* to the next of kin and heir-at-law; and among legatees, the *residuary* legatees are regarded as the least favoured objects of the testator's generosity.

The next important point to be considered is the

Order of Application

of the different assets (as between such assets themselves only) for payment of debts. This order of liability to debts has been settled as follows:—

I. The general personal estate, not bequeathed at all, or by way of residue only.

II. Real estate devised in trust to pay debts.

III. Real estate descended to the heir and not charged with debts.

IV. Real or personal estate charged with the payment of debts, and devised specifically or by way of residue, or suffered to descend or specifically bequeathed, subject to that charge.

V. General pecuniary legacies, including annuities and demonstrative legacies which have become general.

VI. Specific legacies (including demonstrative legacies that so remain), specific devises and residuary devises, not charged with debts.

VII. Real or personal estate subject to a GENERAL power of appointment which has been *actually* exercised by deed in favour of *volunteers* or by will.

VIII. Paraphernalia of widow.

The Land Transfer Act, 1897, provides that in the administration of the estate of a person dying after 1st January 1898, his real estate shall be administered in the same manner as if

it were personal estate, but not so as to alter or affect the order in which real and personal assets respectively are now applicable for payment of funeral and testamentary expenses, debts, or legacies: the residuary personal estate will therefore still remain the primary fund for payment.

Of these in their order—

I. The general personal estate not bequeathed at all, or by way of residue only, and which is generally *legal assets*, constitutes the primary and natural fund for the payment of debts *except*—

(1.) Where there are express words or a plain intention of the testator to exonerate his personal estate; and to constitute such intention, it must be shown that it was meant not merely to charge the real estate, but so to charge it as to discharge the personal estate. As to which, note—

(*a.*) If the real estate is directed to be sold for payment of debts, *and* the personal estate is expressly bequeathed to legatees, the personal estate will be exonerated by necessary implication. Neither of these circumstances *alone* is sufficient.

(*b.*) Where the testator gives his personal estate as a whole, and not as a residue, by way of specific legacy to one who is not executor, and another fund is supplied for payment of debts, &c., the personal estate is exonerated.

(*c.*) Where the testator converts his real and personal estate, and creates a mixed fund out of the produce, and appropriates that fund for payment of debts, &c., the two estates are applicable *pro rata*.

(*d.*) Where a devise is made subject to the payment of an existing incumbrance, or the residue of proceeds of real estate after payment of debts is devised, the personal estate is exonerated.

(2.) Where the charge or incumbrance is, in its own nature, real, as in the case of a jointure or pecuniary portions to be raised out of lands. A mortgage debt is not considered as in its own nature real.

(3.) Where the debt was not contracted by the person who died last seised or entitled, but by some other person from whom he took it by descent or devise, or by some other person from whom he purchased it, or from whom his vendor derived it. (*Sm. Man.* 339 *et seq.*)

(4.) Cases coming under Locke King's Act (17 & 18 Vict. c. 113, now styled "The Real Estate Charges Act, 1854") and its amending Acts. Apart from statutory enactments, mortgage debts, like any other debts, are primarily payable out of the personal estate of the testator, unless devised *cum onere*, or the personalty otherwise exonerated, or the mortgage debt is an ancestral debt which has not been adopted by the testator as his own. For Equity, following the Roman law, regarded a mortgage as only a *collateral* security for the debt.

The Real Estate Charges Act, 1854, however, provided, "that when any person shall die seised of or entitled to any estate or interest in any *land or other hereditaments*, which shall at the time of his death be charged with the payment of any sum or sums of money by way of *mortgage*, and such person shall not by his will, or deed, or other document, have signified *any contrary or other intention*, *the heir or devisee* to whom such lands or hereditaments shall descend or be devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other real estate of such person, but the land or hereditaments so charged shall, *as between the different persons claiming* through or under the deceased person, be *primarily* liable to the payment of all mortgage debts with which the same shall be charged." The Act does not prejudice the right of mortgagees to enforce payment out of personal estate.

As to the Effect and Construction of this Statute.

(*a.*) Freeholds, copyholds, and equitable mortgages were within its provisions; but not *leaseholds*.

Solomon v. *Solomon*; *Hill* v. *Wormsley*.

Leaseholds are now, however, included by the second amending Act (40 & 41 Vict. c. 34), which applies to any testator or intestate dying *after* 31st December 1877, seised or possessed of or entitled to *any land or other hereditaments of whatever tenure.* Notwithstanding that, strictly speaking, the word tenure is not applicable to leaseholds.

Drake v. *Kershaw.*

(*b.*) The Act refers only to specified charges, "sums by way of mortgage," and does not apply to a *vendor's lien* for any unpaid purchase-money.

The first amending Act (30 & 31 Vict. c. 69) provided that the word "mortgage" in the Acts should be deemed to extend to any lien for unpaid purchase-money upon any lands or hereditaments purchased by a *testator.*

The second amending Act (40 & 41 Vict. c. 34) extends the application of the previous Acts to any mortgage or equitable charge or lien for unpaid purchase-money in the case of either a testator or *intestate.*

Where the mortgage comprises both real and personal estate, the liability must be borne *pro rata.*

(*c.*) As to a "contrary or other intention."

In order to take a case out of the Act, it is only necessary to show a "contrary or other intention." It is therefore sufficient to charge the personal estate without at the same time discharging the real estate, but a mere general direction for payment of debts is not sufficient. *Eno* v. *Tatham.*

By the 30 & 31 Vict. c. 69 it is provided that a general direction for payment of debts out of personal estate shall not be sufficient to indicate a contrary intention unless *mortgage debts* are expressly or by necessary implication referred to; and

By the 40 & 41 Vict. c. 34 it is further provided, that a contrary intention shall not be indicated by a charge of or direction for payment of debts upon or out of residuary real and personal estate or residuary real estate.

Such phrases as "all my just debts" will no longer suffice to show a contrary intention.

In re Newmarch, Newmarch v. *Storr.*

Executors are bound to provide for payment of the mortgage debts of their testator before distributing the assets, and if they neglect to do so, will be liable as for a devastavit. They may, however, be protected by the Statutes of Limitation combined with the acquiescence of the mortgagee, in which case the only remedy of the mortgagee for the recovery of his debt will be the equitable one of calling upon the distributees to refund: and even then, the mortgagee may be barred by his own laches. *Blake* v. *Gale.*

II. Lands devised for payment of debts are *equitable assets.*

III. Real estates descended are *legal assets.*

IV. Real or personal estate charged with debts are *equitable assets* and contribute *pro rata.* The heir taking a lapsed devise takes it as *devisee*, and not in his character as heir, and in respect thereof will therefore stand in the fourth line of liability. A residuary devise before the Wills Act was deemed specific, and this has been held to be still the case.

V. All general legacies, &c., contribute *pro rata.*

A doubt has been cast upon the order of application of the assets classified under the last two heads by the decision of *In re Bate*, which transposed that order; but this case has not been followed and it is considered that the old order is correct.

Re Stokes; Le Bas v. *Herbert.*

VI. Specific legacies, specific devises, residuary devises not charged with debts, contribute *pro rata.*

It has been settled that *residuary* devises are to be deemed *specific*, and to be ranked among specific devises for all purposes of administration.

Hensman v. *Fryer; Lancefield* v. *Iggulden.*

VII. Appointed property. The appointed property is treated

as assets, because by the actual exercise of the power the appointor has virtually made it his own.

And under the Married Women's Property Act, 1882, the same rule applies where the appointor is a married woman. *Re Ann Wilson* v. *Ann.*

And now this is more fully provided for by the Married Women's Property Act, 1893.

VIII. Paraphernalia of widow. This ranks last because, although liable to husband's debts, it cannot be disposed of by his *will* without concurrence of wife.

The foregoing order regulates the administration of the assets only as between the testator's own representatives, devisees, and legatees, and does not affect the rights of creditors.

EXECUTOR'S RIGHT OF RETAINER.

The right of an executor to retain his own debt out of his testator's assets is said to have arisen from the executor's inability to sue himself in a court of law for the recovery of his own debt. *Walters* v. *Walters.*

With regard to this right note the following points:—

(1.) It exists in respect of LEGAL ASSETS only, and not equitable assets, but applies to equitable as well as legal debts.

(2.) It has not been abolished by the Administration of Estates Act, 1869, *Wilson* v. *Coxwell.*
or the Judicature Act, 1875, s. 10. *Lee* v. *Nuthall.*

(3.) It is a right *inter pares* only, *i.e.*, as against creditors in an equal degree with the executor, *e.g.*, an executor *simple* contract creditor cannot retain as against a *specialty* creditor notwithstanding The Administration of Estates Act, 1869. *In re Briggs*; *Wilson* v. *Coxwell.*

(4.) It is not lost by an administration decree.
Campbell v. *Campbell.*
Or an order for account under R. S. C. XV. 1.
Whitaker v. *Barratt.*
Or the payment of assets into court.
Richmond v. *White.*
Or by the making of a "balance order" in the winding up of a company. *International Marine Co.* v. *Hawes.*

(5.) It is taken away by the appointment of a receiver; but is allowed in respect of the legal assets recovered by the executor before the receiver is appointed.

Calver v. *Laxton.*

A receiver will not, however, be appointed on purpose to defeat the executor's right. *Molony* v. *Brooke.*

Nor will money in court be paid out to give the executor the right. *Trevor* v. *Hutchins.*

(6.) It exists in favour of a married woman in respect of loan to her deceased husband for purposes of his business. *Crawford* v. *May.*

(7.) It exists although the debt is a joint-debt, but cannot be exercised by one joint-creditor to the prejudice of another. *Crowder* v. *Stewart.*

Nor can an executor exercise the right to the prejudice of his co-executor, if a creditor of equal degree.

(8.) It exists notwithstanding the debt is statute-barred; *Hill* v. *Walker.*

provided the court has not adjudged the debt to be irrecoverable; *Midgeley* v. *Midgeley.*

but does not extend to a debt not enforceable by the Statute of Frauds. *Field* v. *White.*

It exists where the claim of the executor is as surety only. *Jones* v. *Pennefather.*

(9.) It does not exist in respect of moneys which executor holds as trustee only for the estate of the testator.

Talbot v. *Frere.*

(10.) There is no retainer except out of assets come to the executor's own hands. The right is limited to assets recovered by the executor in his lifetime; but if, as to such assets, the executor has in his lifetime asserted the right, his representatives may insist upon it.

Norton v. *Compton.*

(11.) It extends not only to an executor, but also to an administrator (who takes out administration as *next of kin*), to an administrator *de bonis non* and to the executor of an executor, but not the executor of one of several executors, one or more of whom is still living.

Trevor v. *Hutchins; Hopton* v. *Dryden.*

But an administrator who takes out administration as

CREDITOR will be prevented from exercising the right by the terms of his bond. *Re Brackenbury.*

(12.) It does not exist when the estate is being administered in Bankruptcy, and is lost by the transfer from the Chancery Division to Bankruptcy. *Atkinson* v. *Powell.*

But such transfer will not be made merely for the purpose of defeating the right. *Earp* v. *Briggs.*

An heir-at-law or devisee has no right of retainer out of lands made assets by 3 & 4 Will. IV. c. 104, nor, generally, out of any lands whatsoever.

Davidson v. *Illidge.*

An executor has no right of retainer against real estate; it is apprehended the Land Transfer Act, 1897, does not alter the law in this respect.

An executor's liability extends not only to the assets which he has received, but also to what, but for his "wilful default," he might have received.

Actions for administration can only be brought by persons whose claims to recover are not barred by any Statute of Limitations; such claims can be kept alive by the acknowledgment of any one of the executors.

The estates of officers and soldiers in actual service are administered under the provisions of the Regimental Debts Act, 1893.

CHAPTER XV.

MARSHALLING ASSETS.

THE general doctrine has been defined as "such an arrangement of the different funds of the common debtor of two or more creditors as may satisfy every claim, so far as without injustice such assets can be applied in satisfaction thereof, notwithstanding the claims of particular individuals to prior satisfaction out of some one or more of these funds."

The principle of the rule is, "that a person having two funds to satisfy his demands shall not by his election disappoint a party who has only one fund." *Aldrich* v. *Cooper.*

"There are two essentials to marshalling:—

"(1.) The creditor who has been paid out of one fund must have had the right of recourse to the other.

"(2.) The creditor or other person who has been disappointed must have had a right to the fund out of which the other creditor has been paid.

"A person is said to 'marshal' against those assets which he is entitled to have applied in priority to his own particular fund." (*Eddis' Assets*, 89, 90.)

It is clear that there can be no marshalling except as between creditors of the *same* debtor. Consider—

I. Marshalling as between creditors.

II. Marshalling as between beneficiaries under a will.

I. Prior to 3 & 4 Will. IV. c. 104, simple contract creditors could marshal against the real assets to the extent the specialty creditors might have exhausted the personal assets. This Act and the Administration of Estates Act, 1869, have rendered marshalling between creditors of little importance. The same principle has been applied to the case of securities.

The doctrine of marshalling of securities has been stated thus:—

> "If a creditor has a lien on or an interest in two funds belonging to the same person, and another creditor has a lien on or an interest in one only of the funds, and the claims of both could not be satisfied if the former were to resort to the fund in which alone the latter is interested, then the latter creditor can in equity compel the former to resort to the other fund first for satisfaction, unless that would operate to the prejudice of the persons entitled to the double fund or of the common debtor." (*Sm. Man.*, 454) *Lanoy* v. *Athole.*

II. As between beneficiaries under a will, questions of marshalling arise chiefly from the disturbing action of creditors in taking some part of the assets out of their usual order; for it must be remembered that the order of application of assets does not affect the right of *creditors* to resort in the first instance to any of the funds to which their claims extend. *Aldrich* v. *Cooper.*

The principle of marshalling in these cases is derived from the order of application of assets. Substitute for each of the properties specified on p. 79 *ante* the persons to whom they would go in the absence of debts. Thus:—

1. Next of kin or residuary legatee.
2. Heir-at-law.
3. Heir-at-law.
4. Charged devisees (specific and residuary) and charged specific legatees.
5. Pecuniary legatees.

   As to 4 and 5, however, note the doubt mentioned on p. 83 *ante*.
6. Devisees (specific and residuary) and the specific legatees.
7. General appointees by deed or will.
8. Widow.

If any of the above beneficiaries is deprived of his benefit by creditors appropriating the fund intended for him, then he may recoup himself by appropriating in his turn the fund intended for any one or more of the beneficiaries *prior* (but not subsequent) to himself in the above list.

Marshalling arises not only in consequence of the disturbing action of a creditor, but also from the presumption that a testator leaving legacies wishes that if possible they should be paid. Legacies are not payable out of *real* estate UNLESS in some way *charged* upon it by the testator, for no statute has ever done for legatees what 3 & 4 Will. IV. c. 104, did for creditors.

The Land Transfer Act, 1897, which vests realty in the personal representatives, expressly enacts that the existing order of application is not to be altered or affected thereby

As to what will amount to a charge of legacies on realty, note—

(1.) The intention must be manifest.

(2.) An implied charge arises when a testator, after a general gift of legacies, gives all the residue of his real and personal estate to specified persons.

Observe further—

(*a.*) If legacies *charged* on real estate should be paid out of personal estate so as to leave insufficient personalty to pay other legacies *not so charged*, then equity will

marshal the assets, so that the legacies payable out of the personal estate only will be thrown on the real estate to the extent they have been deprived of the personal estate.

(*b.*) When a legacy charged on real estate fails, equity will *not* marshal assets so as to throw it upon the personal estate and render it transmissible.

(*c.*) Assets, if not marshalled by the testator himself, were formerly never marshalled in favour of *charities*, for a court of equity would not support a bequest contrary to law. The rule adopted in such case, as before mentioned, is laid down in *Williams* v. *Kershaw*.

But now under the Mortmain and Charitable Uses Act, 1891, real estate may be lawfully given by will to charities, so that the necessity for marshalling no longer exists.

CHAPTER XVI.

MORTGAGES.

A LEGAL mortgage is a debt secured on lands or other property; the legal ownership is vested in the creditor, the equitable ownership remains in the debtor.

There are some species of property which are unmortgageable, *e.g.*, pew-rents, the separate property of a married woman which she is restrained from anticipating.

In taking securities from companies, it should be ascertained that the company—

(1.) Has power to borrow, and is not exceeding such power.

(2.) Is not borrowing for an unauthorised purpose.

(3.) Has power to validly charge the property in question.

In the interpretation clause of the Conveyancing Act, 1881, the term *mortgage* is stated to include "any charge on any property for securing money or money's worth."

At law a mortgage was strictly an estate upon condition, the estate being forfeited upon the condition being broken, or, in other words, "an absolute conveyance subject to an agreement for a re-conveyance on a certain given event." In equity, how-

ever, "a mortgage debt is a sum of money the payment whereof is secured, with interest, on certain lands, and being money, is personal property, subject to all the incidents which appertain to such property;" in fact, a mortgage was regarded merely as a *security or pledge.* As a necessary result, it was held that after the day fixed in the mortgage for payment of the money had passed, the mortgagor (notwithstanding the estate of the mortgagee had become *absolute at law*) had still a right to redeem his estate on payment within a reasonable time of all principal, interest, and costs, due upon the mortgage to the time of actual payment. This right still exists, and is known as the mortgagor's *equity of redemption.*

(*Vide Wms. R. P.* 489 *et seq.*)

Courts of equity went on to hold that the maxim *Modus et conventio vincunt legem* did not apply to mortgages, and accordingly that the debtor could not by any agreement entered into at the *time of the loan* part with this right to redeem; and further, that the principle universally applied, "Once a mortgage, always a mortgage," *i.e.*, that an estate could not at one time be a mortgage and at another time cease to be so *by one and the same deed.* *Howard* v. *Harris; Salt* v. *Northampton.*

Nor may the equity of redemption be clogged with restrictions. *Field* v. *Hopkins.*

In this respect a mortgage must be distinguished from a *bonâ fide* sale and conveyance with option of re-purchase; thus

(*a.*) On such a sale the time limited for re-purchase must be strictly observed, for no relief will be given by equity.

(*b.*) In case of the option being exercised after death of purchaser, the purchase-money went to *real* representative, whereas mortgage money went to the *personal* representative of the mortgagee. Under the Land Transfer Act, 1897, realty now vests in the personal representative, but the ultimate benefit will be as before, *i.e.*, in the former case for the heir or devisee, and in the latter for the next of kin or residuary legatee.

Three old forms of mortgage may be noticed—

(1.) *Vivum vadium*, an absolute conveyance of land by a

debtor to his creditor, to be held by him until he was repaid principal and interest out of the rents and profits.

(2.) *Mortuum vadium*, a feoffment of land by a debtor to his creditor, to be held by him until payment of a given sum, he meanwhile receiving rents and profits *without account.*

(3.) *Welsh mortgage*, a conveyance similar to the last, the estate being redeemable at any time, and the creditor receiving the rents and profits in lieu of interest.

The mortgagee had no right to foreclose or sue for his money under any of the foregoing securities.

As to Redemption.

In all the old forms of mortgage the estate was never lost, but in a modern mortgage the mortgagee's equity of redemption may be barred, *e.g.*, by an order of foreclosure absolute, or sale by the mortgagee under his power.

The equity of redemption is not a *mere right*, but an *estate* in the land, and will consequently devolve as the land, *e.g.*, it is subject to curtesy. *Casborne* v. *Scarfe.*

Any person entitled to any estate or interest in the equity of redemption has a right to redeem before foreclosure, *e.g.*, heir, tenant for life, &c.

When a mortgage comprises real and personal property, and the mortgagor dies intestate, and the heir-at-law is not known, the legal personal representative of the mortgagor may redeem the whole. *Hall* v. *Heward.*

And every person entitled to redeem may redeem any prior incumbrance on payment of principal, interests, and costs, which is called "the price of redemption." The rule in foreclosure actions is to offer to redeem all incumbrances prior in date to the plaintiff, and to claim to foreclose all incumbrances subsequent in date; and is thus expressed: "Redeem up, foreclose down." In ordinary cases the rule now is to give only one time for redemption to all the puisne mortgagees, including the mortgagor, and not, as formerly, successive times to each.

Glegg's Case; Smith v. *Olding.*

If the mortgagee has refused an offer rightly made to redeem him, he will have to bear the costs of the redemption action thereby occasioned.

Under the Conveyancing Act, 1881, s. 15, a person entitled to redeem may compel the mortgagee, instead of reconveying, and on the terms on which he would be bound to reconvey, to transfer the mortgage to a third person; and by the Conveyancing Act, 1882, s. 12, this right is extended to each incumbrancer or the mortgagor, notwithstanding any intermediate incumbrance.

No redemption is allowed before the time appointed for payment in the mortgage.

West Derby Union v. *Metropolitan Life; Brown* v. *Cole.*

After the time fixed for payment has passed, the mortgagor cannot redeem without giving the mortgagee six months' notice, or six months' interest in lieu thereof, unless the mortgagee has taken possession or has demanded, or commenced proceedings to recover, payment: but this rule does not necessarily apply to equitable mortgages.

The mortgagee is bound to accept the six months' interest in lieu of notice. *Johnson* v. *Evans.*

When a certificate has been made in a foreclosure action, the mortgagor cannot redeem without paying interest up to the date fixed for redemption in the certificate. *Hill* v. *Rowlands.*

Under the Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), no redemption will be allowed after the expiration of twelve years from the time when the mortgagee took possession, or from the last *written* acknowledgment of the mortgagor's title; this term is not extended by reason of the mortgagor's *disability.*

Forster v. *Patteson; Kinsman* v. *Rouse.*

The mortgagee's remedy on the mortgagor's covenant in the mortgage deed or collateral bond is barred after twelve years.

Sutton v. *Sutton; Fernside* v. *Flint.*

But this rule is not to be extended beyond the case of an action against the mortgagor himself, *e.g.*, to a surety.

Re Powers; Re Frisby.

On the principle of these cases a mortgagee suing on the covenant or bond can recover six years' arrears of interest only. But apparently when a mortgagee is redeemed or has sold under his power, he will be entitled to all arrears of interest.

It will be remembered that these Statutes of Limitation

relating to land not only bar the remedy but also extinguish the title.

Mortgagor—His Rights and Duties.

(*a.*) Equity regards the mortgagor as the *owner* of the mortgaged estate; and now, to a great extent, the position of the mortgagor is the same at law as in equity. By the Judicature Act, 1873, s. 25, § 5, "a mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession or for the recovery of such rents and profits in his own name only." The mortgagor while *in possession* is not the bailiff of the mortgagee, and therefore not accountable for rents and profits, although the security be insufficient.

(*b.*) The mortgagor, although owner, will be restrained from waste and prevented from dealing with the estate so as to injure the mortgagee, *if the security is insufficient*.

(*c.*) For the purpose of eviction after default, the mortgagor will be deemed a mere tenant at will to the mortgagee. but see R.S.O.c. 133 § 5 s-s. 8.

(*d.*) Formerly a valid lease could not be made by the mortgagor without the concurrence of the mortgagee who had the legal estate; such a lease would, however, have been good by estoppel against the mortgagor; and so the tenancies created by the mortgagor *subsequent* to the mortgage could be avoided by the mortgagee. *Keech* v. *Hall.*

In such cases if the mortgagee give notice to the tenants to pay rent to him, they will, on complying with such notice, become tenants from year to year to the mortgagee, notwithstanding, their leases may be for terms of years.

In agricultural holdings, the Tenants Compensation Act, 1890, provides that the tenant will be entitled

to six months' notice if the mortgagee wishes to take possession, and also to any compensation for improvements, &c., he would otherwise be entitled to from the mortgagor at the end of the tenancy.

Under the Conveyancing Act, 1881, s. 18, a mortgagor while in possession (unless specially precluded by the mortgage deed or otherwise) has power to lease for twenty-one years in the case of an agricultural or occupation lease, and for ninety-nine years in the case of a building lease, on complying with the requirements of the Act in that behalf.

Mortgagee—His Rights and Liabilities.

(*a.*) The mortgagee is the *legal* owner of the land, and as such entitled immediately to possession or the rents, and his proper expenses attending their collection, but he cannot charge for any *personal* trouble. His proper course, therefore, is to appoint a receiver, either by virtue of express agreement with the mortgagor, or under his statutory power. The possession of the receiver is deemed to be that of the mortgagor, for the receiver appointed by the mortgagee is the *agent of the mortgagor*, but cannot be interfered with by him: and the mortgagee will thus obtain the advantages without the responsibilities of possession. Under the Conveyancing Act, 1881, s. 19, a mortgagee, when the mortgage is made by deed, has power, at any time after the mortgage money has become due, to appoint a receiver whenever he is entitled to exercise the statutory power of sale.

A mortgagee who has once taken possession cannot go out of possession for the purpose of obtaining a receiver.

As to *West India* estates, a mortgagee may stipulate for payment of commission for his personal trouble as long as he is *not in possession.*

A mortgagee renewing a lease holds the renewed lease subject to the same equity of redemption as the lapsed one.

The mortgagee of an advowson is the person to present on a vacancy, but he must present the nominee of the mortgagor. *Mackenzie* v. *Robinson.*

The mortgagee is in no way entitled to any benefit beyond principal, interest, and costs.

(*b.*) A stipulation for the mortgagee to receive interest at a *lower* rate than that actually reserved, if punctually paid, is good, but *not vice versa.* The fines and penal payments contained in mortgages to Building Societies are, however, recoverable in full.

(*c.*) Mortgagee in *possession* must keep estate in *necessary* repair, but is only bound to do so to extent of *surplus* rents.

(*d.*) Mortgagee in *possession* is liable to account for the rents, *not* according to actual value of estate, but only for what he actually receives, or might have received, but for his *wilful default.* To a limited extent, therefore, a mortgagee in *possession* is a trustee for the mortgagor, and if he transfers the mortgage *without* the mortgagor's consent or the direction of the court, he will continue liable to account for rents subsequently received. He is not bound, however, to make the *most* of another's property, as it is in consequence of the laches of the mortgagor the land lapses into the hands of the mortgagee.

The receipt of rents and profits will not *per se* make a mortgagee chargeable as mortgagee in possession. The question depends upon whether he has taken out of the mortgagor's hands the power and duty of managing the estate and dealing with the tenants. *Noyes* v. *Pollock.*

A mortgagee in *possession* may add to his mortgage debt any moneys properly expended in maintaining his title and for insurance and necessary repairs.

Where there are successive mortgages, the first mortgagee in *possession* is accountable to the second mortgagee.

A mortgagee in possession cannot claim any notice or interest in lieu of notice if the mortgagor offers to redeem.

(*e.*) When the receipts of the mortgagee in *possession* exceed the interest, the annual surplus will be applied in reduction of the principal money, which is called taking the account "with *annual rests*." As a general rule, annual rests will not be directed if the interest is in arrear, or some other danger overhanging the security when the mortgagee takes possession.

(*f.*) Formerly a mortgagee could not be compelled to produce his title-deeds without payment of all moneys due on the security; but under the Conveyancing Act, 1881, s. 16, a person entitled to redeem can require the production of the deeds on payment of the mortgagee's costs. Upon redemption the mortgagee must hand over all the title-deeds, and will be liable in damages for any missing documents.

(*g.*) A lease from the mortgagor to the mortgagee is under no circumstances valid. Formerly a mortgagee even in possession could not make a valid lease without the concurrence of the mortgagor, but only one liable to be avoided on redemption. The Conveyancing Act, 1881, s. 18, gives to a mortgagee while in *possession* (unless barred by the express provisions of the mortgage deed or otherwise) the same power to make valid leases as the mortgagor.

(*h.*) A mortgagee cannot purchase the mortgaged property under the power of sale contained in the mortgage deed.

(*i.*) Mortgagee in *possession* must not commit waste. As a general rule, unless the security were insufficient, he could not fell timber, and if he did so he was subject to an onerous account. But under the Conveyancing Act, 1881, s. 19, a mortgagee in possession, where the mortgage is made subsequent to 31st December 1881, has power to cut and sell timber, not being ornamental timber.

Tacking.

Tacking may be described as the union of two incumbrances on the same property by the mortgagee who has the legal

estate, so as to postpone an intermediate incumbrance which is prior in point of date to the one tacked, and of which he had no notice at the time of making his subsequent advance.

The doctrine depends upon the maxim, "Where equity is equal, the law shall prevail."

The leading principles or rules of this doctrine appear for the most part in the leading case of *Brace* v. *Duchess of Marlborough*, and may be stated thus :—

(1.) Third mortgagee, making advance without notice of second, although he subsequently obtains the first mortgage with notice of second, may tack. But

(*a.*) He cannot tack unless he has obtained either the *legal* estate or the best right to call for it.

(*b.*) He is allowed to tack notwithstanding he has notice of the second mortgage, because he had *no notice when he made* his advance, and is therefore an honest creditor. *Marsh* v. *Lee.*

(*c.*) The legal estate must be outstanding in person having no privity with prior incumbrancers.

(*d.*) No tacking allowed where the first mortgage has been paid off and third mortgagee has notice before he obtains transfer, as, when paid off, the first mortgagee becomes a trustee for the second mortgagee. *Bates* v. *Johnson.*

(2.) Judgment creditor buying in the first legal mortgage cannot tack, for he is not a *purchaser*, and did not lend his money in contemplation of the land.

(3.) First mortgagee making a further advance upon a judgment or another mortgage may tack. But

(*a.*) He must have the legal estate or the best right to call for it.

(*b.*) He must make the advance *without notice* of mesne incumbrance, even if his first mortgage was to secure further advances. *Rolt* v. *Hopkinson.* Unless the mortgagee was under a legal obligation to make further advances.

But debentures creating a "floating charge" over the assets of a company leave the company at liberty to create specific mortgages over any part of the property charged, and such specific mortgages will rank in priority to the

debentures; unless the floating charge prohibits the creation of prior incumbrances and the specific mortgagee has notice of the terms thereof.

(4.) Where legal estate is outstanding, incumbrancers rank in order of date, according to the maxim, *Qui prior est tempore, potior est jure,* unless one of them has a better title to call for the legal estate.

(5.) Building Society mortgages were formerly considered an exception to the general rule, on the ground that when a Building Society, being first mortgagee, is paid off by a third mortgagee, and indorses the statutory receipt, the legal estate vests for the benefit of all the mortgagees according to the priority of their dates. *Pease* v. *Jackson.* But it has now been decided this opinion is erroneous and that Building Society mortgages are within the general rules as to tacking. *Hosking* v. *Smith.*

(6.) Bond or simple contract debts cannot be tacked during the life of the debtor, and even after his death only as against volunteers, so as to avoid circuity of action.

(7.) By the 7th section of the Vendor and Purchaser Act, 1874, an attempt was made to abolish tacking; but this section was repealed by the Land Transfer Act, 1875, as from the date at which it came into operation, except as to anything duly done thereunder.

(8.) Tacking is practically abolished, so far as lands in Yorkshire are concerned, by the Yorkshire Registries Act, 1884.

(9.) Priority may be lost by a mortgagee's fraud or negligence inducing deception, but not by mere carelessness on the part of the mortgagee.

Manners v. *Maw; Northern Fire Insurance* v. *Whipp; Farrand* v. *Yorkshire Bank.*

A solicitor is usually liable for negligence in not discovering a mesne incumbrance.

Consolidation.

"If one person should have mortgaged lands to another for a sum of money, and subsequently have mortgaged other lands to the same person for another sum of money, the mortgagee was placed by the rules of equity in the same

favourable position as if the whole of the lands had been mortgaged to him for the sum total of the moneys advanced. . . . This rule, known as the *doctrine of the consolidation* of securities, was extended to the case of mortgages of different lands made to different persons by the same mortgagor becoming vested by transfer in the same mortgagee."

(*Wms. R. P.* 510) *Vint* v. *Padget; Pledge* v. *White.*

Shortly, the right of consolidation is the right of the holder of two mortgages to refuse to be redeemed as to one, without the other being redeemed also.

Consolidation will be applicable—

(1.) Where at the date when redemption is sought all the mortgages are united in one hand, and redeemable by the same person;

(2.) Or where, after that state of things has once existed, the equities of redemption have become separated.

Pledge v. *White.*

The right of consolidation does not attach—

(1.) Where in one of the mortgages in respect of which it is claimed there has been no default.

Cummins v. *Fletcher.*

(2.) Where one of the properties originally mortgaged has ceased to exist. *Re Raggett.*

(3.) Where the mortgage of one of the properties was created subsequently to the assignment of the equity of the other property to the person seeking to redeem. *Harter* v. *Colman; Mills* v. *Jennings.*

Unless he had notice at the time of assignment that the mortgage contained a power to consolidate.

Andrews v. *City Building Society.*

The doctrine applies when the mortgagee is foreclosing as well as when the mortgagor is seeking to redeem, and an equitable mortgage may be consolidated with a legal mortgage.

The doctrine applies to equitable as well as legal mortgages and to mortgages of personalty as well as realty, but bills of sale and mortgages of realty cannot be consolidated. *Chesworth* v. *Hunt.*

A mortgagee exercising his power of sale may apply the surplus proceeds of sale of one estate toward satisfaction of an insufficient security over another if the mortgagor be alive.

Selby v. *Pomfret.*

But not in payment of arrears of interest due on the other.

The right of consolidation is further curtailed by the Conveyancing Act, 1881, s. 17, which applies where any one of the mortgages sought to be consolidated is made after 31st December 1881, *unless* a contrary intention is expressed in the mortgages, or one of them, and provides that a mortgagor seeking to redeem any one mortgage may do so without redeeming any other mortgage. It should be noted that restrictions on the right of consolidation, however arising, have no application to the case of two or more distinct properties being included in the same mortgage.

Tacking distinguished from Consolidatian.

(1.) Tacking is the right to throw together several debts lent on the *same* estate, while consolidation is the right to throw together on one estate several debts lent on *different* estates.

(2.) Tacking depends entirely on the protection afforded by the *legal estate*, while consolidation does not.

(3.) Tacking is based on the maxim, "Where the equities are equal, the law must prevail;" consolidation, on "He who seeks equity must do equity."

(4.) Notice is fatal to the right of tacking, but, except as above appears, immaterial in consolidation.

Special Remedies of Mortgagee.

(1.) Foreclosure. The mortgagee can call in his money without notice at any time after default, and failing payment, will not be always liable to account, but after a reasonable time equity will hold the mortgagor to have lost his equity of redemption, *i.e.*, to be foreclosed, and the estate will become the absolute property of the mortgagee. A judgment for foreclosure may also direct possession of the mortgaged property to be given to the mortgagee. The first or any *puisne* mortgagee can bring a foreclosure action, which must be assigned to the Chancery Division. Foreclosure actions must be brought within twelve years from the accrual of the action, or the last written acknowledg-

ment, or the last payment of any part of the principal or interest.

The *strict* right of a legal mortgagee is foreclosure and not sale.

The remedy of a debenture-holder is usually the appointment of a receiver, but in a proper case he may have a winding-up order, or even a sale of the company's undertaking may be decreed.

(2.) Sale.

(*a.*) By order of the court. Under the Conveyancing Act, 1881, s. 25, on the request of the mortgagee, the court has power to direct a sale on such terms as it thinks fit, even upon an interlocutory application.

Wooley v. *Colman.*

(*b.*) Under power in mortgage deed. The surplus proceeds under sale must be paid to persons who (but for sale) would have been entitled to redeem.

(*c.*) Under statutory power. By the 19th section of the Conveyancing Act, 1881, a power of sale (unless expressly excluded), is rendered incident to every mortgage of any property, where made by *deed*, after the mortgage money has become due; but by the 20th section is not exercisable until after—

(*a.*) Three months' default after notice in writing,

or (*β.*) Some interest in arrear for two months,

or (*γ.*) Breach of some provision (other than payment of money), in mortgage or Act.

An equitable mortgagee by deed may sell under this section, but he cannot convey the legal estate to the purchaser. *Re Hobson and Howe.*

A mortgagee *bonâ fide* exercising his power of sale is not bound to make the most possible of the mortgaged property, as he is not deemed a trustee for the mortgagor. *Colson* v. *Williams; Warner* v. *Jacob.*

But a mortgagee who has received notice of a second mortgage is a trustee for such puisne mortgagee to the extent of any balance arising from a sale, whether by himself or the mortgagor.

W. L. C. Bank v. *Reliance Building Society.*

And as such trustee he is within sec. 8 of the

Trustee Act, 1888, and can plead the Statute of Limitations.

And a mortgagee who on a sale misdescribes the property is liable to account to a second mortgagee for compensation for such misdescription reducing the purchase-money. *Tomlin* v. *Luce.*

And a mortgagee who has realised a surplus by a sale under his power is liable (in the absence of special circumstances) to pay interest at 4 per cent. thereon as long as he retains it. *Charles* v. *Jones; Eley* v. *Read.*

A mortgagee cannot purchase under the power of sale in the mortgage; but a second mortgagee may purchase from the first mortgagee.

Where notice is required before power can be exercised, apparently it should be given not only to the mortgagor, but to subsequent incumbrancers of whose charges the mortgagee has notice. *Hoole* v. *Smith.*

A purchaser is not protected who has express notice that the selling mortgagee has not given to the mortgagor the requisite notice of sale.

Selwyn v. *Garfit.*

(3.) Attornment clause. Formerly it was usual, when the mortgagor was in actual possession at the date of the mortgage, to insert therein an attornment clause, whereby the mortgagor attorned tenant to the mortgagee at an annual rent (generally equivalent to the interest), so as to give the mortgagee a power of distress. If the rent reserved exceeded the interest, the mortgagee could apply the surplus towards satisfaction of principal money.

The mortgagee exercising a valid attornment clause is in the position of landlord, so as to have power to distrain on a stranger's goods found on the premises.

Kearsley v. *Phillips.*

The mere insertion of an attornment clause in a mortgage which has not been acted upon will not render a mortgagee liable to account as if he were in possession.

Stanley v. *Grundy.*

But a mortgagee who has *actually distrained* under an attornment clause will be liable to account as mortgagee in possession. *In re Stockton Iron Furnace Co.*

Under the Bills of Sale Act, 1878, unless the mortgage deed containing an attornment clause be *registered* as a bill of sale, the mortgagee will not be able to distrain under it.

Re Willis, ex parte Kennedy; Green v. *Marsh.*

And as a bill of sale to secure money must be drawn in the statutory form provided by the Bills of Sale Act, 1882, the attornment clause cannot in future be rendered available at all for the purposes of distress.

But an attornment clause is still good for the purpose of creating the relationship of landlord and tenant, and the mortgagee may determine the tenancy and issue a specially endorsed writ for recovery of the mortgaged land, and proceed summarily for judgment under Order xiv. R.S.C.

Mumford v. *Collier.*

Generally.

A mortgagee may, as a general rule, pursue all his remedies *concurrently.* Thus if he obtains part payment under the covenant or bond, he may go on with his foreclosure for non-payment of the balance.

If a mortgagee selling under his power of sale obtains part only of the money due, he may sue on the covenant for any balance. *Rudge* v. *Richens.*

To this general rule there is one exception, namely, the case of a mortgagee who *forecloses first.* If a mortgagee *after* foreclosure sues the mortgagor on his covenant or bond, he will by so doing *open the foreclosure*, and give the mortgagor a fresh right to redeem. *Lockhart* v. *Hardy.*

He will also do so if he receive any rents of the mortgaged property subsequent to the judgment for foreclosure (not being yet absolute), but *before* the day fixed for redemption.

Jenner Fust v. *Needham.*

If a mortgagee *after* foreclosure has *sold* the estate, he will be restrained from suing the mortgagor, since he no longer retains the mortgaged estate in his power, ready to be redeemed. *Palmer* v. *Hendrie.*

A mortgagee will in some cases be restrained from pursuing his remedies concurrently, *e.g.*, if he has neglected to furnish proper accounts to the mortgagor, or refused a valid tender of moneys due on his security.

When the mortgaged property consists of a railway or canal, the proper remedy of the mortgagee is to obtain the appointment of a receiver, and he will be restrained from foreclosure or sale.

Where by the mortgage the equity of redemption is subjected to limitations different from those subsisting prior to the mortgage, it will, unless a contrary intention be manifest from the deed, follow the limitations of the original estate. Thus in a mortgage of the wife's estate by the husband and wife, reserving the equity of redemption to the husband and his heirs, the equity nevertheless results to the wife.

Huntingdon v. *Huntingdon.*

In any case, the proviso for redemption should always be strictly followed.

CHAPTER XVII

EQUITABLE MORTGAGES OF REALTY.

An equitable mortgage—a mortgage recognised as such in equity only—may be created by a formal mortgage of the equity of redemption, or by a written agreement whereby the property is *charged* or agreed to be made a security for the advance, or by a mere deposit of deeds without any writing.

Nearly all property which can be legally mortgaged, can be made the subject of an equitable mortgage by deposit.

Notwithstanding the 4th section of the Statute of Frauds, providing that "no action shall be brought upon any contract or sale of lands unless the agreement or some memorandum or note thereof be in writing," a bare deposit of deeds has been held to constitute an equitable mortgage of real estate, such deposit being of itself evidence of an *agreement executed* for a mortgage. *Russell* v. *Russell.*

The statute was construed not to affect mere pledges of deeds to secure borrowed money, for courts of law would not assist a depositor to recover his deeds without payment of what was due, and to this, it is said, the doctrine owes its origin.

Keys v. *Williams.*

With regard to these mortgages by deposit note:—

(1.) They carry interest at £4 per cent., and extend to future advances, if such was the original intention.

(2.) Deposit for purpose of preparing legal mortgage constitutes an interim equitable mortgage.

(3.) If the deeds deposited are material to the title, it is sufficient, although all such are not deposited. In case of registration the land certificate must be deposited.

(4.) They are not a breach of a covenant against alienation, and in the case of a lease the depositee is not liable on the covenants, and cannot be made to take a legal assignment.

(5.) If made by a tenant for life, they affect *his* interest only.

(6.) They have priority over subsequent *legal* mortgages made with *notice*. And the mere absence of the deeds is generally sufficient to affect the legal mortgagee with notice, unless he has made *bonâ fide* inquiry after them, or can show that he has not been guilty of gross negligence with regard to them.

Hewitt v. *Loosemore.*

(7.) If an equitable mortgagee parts with the deeds to the mortgagor, he may be postponed to any subsequent dealings of the mortgagor therewith.

Rice v. *Rice; Keat* v. *Phillips.*

(8.) If the memorandum of deposit contains a declaration that the mortgagor holds the property in trust for the mortgagee, he will be a trustee within the meaning of the Trustee Act, 1893, sec. 12, so that the mortgagee will be able to appoint a new trustee in his place and secure the advantage of the legal estate. *L. C. Bank* v. *Goddard.*

Remedies of Equitable Mortgagee of Realty.

The proper remedy is foreclosure and not sale, in whatever way the mortgage is made.

James v. *James; Backhouse* v. *Charlton.*

But now under sec. 25 of the Conveyancing Act, 1881, a sale may be ordered whether there is an agreement to execute a legal mortgage or not. *Oldham* v. *Stringer*.

Amongst the numerous objections to equitable mortgages are :—

(1.) They are subject to all the equities affecting the mortgagor.

(2.) They are without the benefits afforded by the protection of the legal estate.

(3.) They cannot be enforced except through the court.

(4.) They are in various ways liable to be postponed to subsequent incumbrances created without notice.

CHAPTER XVIII.

MORTGAGES AND PLEDGES OF PERSONALTY.

A MORTGAGE of personal property has been defined as a "transfer of the ownership itself, subject to be defeated by the performance of the condition within a certain time.

"A PLEDGE only passes the possession, or at most a special property, to the pledgee, with a right of retainer till the debt is paid or the engagement is fulfilled." (*Sm. Man.*, 427.)

A Mortgage differs from a Pledge

(1.) In their nature, as appears from definitions.

(2.) In respect of remedies.

(*a.*) If no time is fixed for payment, the *pledgor* has his whole life to redeem, unless called upon by the pledgee, except in cases to which the Pawnbrokers Act, 1872, applies.

(*b.*) *Pledgor's* remedy is generally at law.

(*c.*) *Pledgee* in general may neither sell nor submortgage without first demanding payment.

(3.) The right of the *pledgee* is not complete without possession.

A Mortgage of REALTY *differs from a Mortgage or Pledge of* PERSONALTY

(1.) As regards remedies.

(*a.*) After default, mortgagee or pledgee of personalty can *sell* upon due notice: he need not foreclose.

(*b.*) Before default, pledgee can sell or sub-pledge a negotiable instrument and thereby bind the pledgor: but in the case of a non-negotiable instrument the pledgor is only bound to the extent of the pledgee's right.

(2.) As regards tacking.

A more extensive right appears to be enjoyed in mortgages and pledges of personalty than of realty. There is no need to prove any distinct agreement for that purpose.

A mortgagee of personalty may under special circumstances apply the surplus on a sale in satisfaction of a subsequent judgment debt, *e.g.*, in case of mortgagor's bankruptcy under the "mutual credit" clause of the Bankruptcy Act.

(3.) As regards form.

Mortgages of personal chattels must in all respects conform to the provisions of the Bills of Sale Acts, 1878 and 1882. A pledge is not a bill of sale. And under the provisions of the Factors Act, 1889, and Sale of Goods Act, 1893, factors and others in possession may pledge goods of which they are not owners to *bonâ fide* lenders.

It may be noted that a legal mortgage of a ship need not be registered under the Bills of Sale Acts, but must be made, transferred, and discharged in the form prescribed by the Merchant Shipping Act, 1894, and registered by the Registrar of Shipping. The registered mortgagee has an absolute power of sale. An unregistered mortgage is good generally against all persons (including trustee in bankruptcy) except a subsequent duly registered mortgagee. The Act also provides that equities may be enforced against mortgagees and owners of ships, just as against mortgagees and owners of other personal chattels.

CHAPTER XIX.

LIENS.

A LIEN, as a general rule, gives a mere *passive* right of retainer or possession without any *active* right, and is thus distinguishable from a mortgage or pledge.

Liens, by their nature, or by giving rise to matters of account, are often involved in uncertainty, and thus become subjects of equity jurisdiction. They exhibit the following diversities:—

(1.) On goods either,
  (*a.*) Particular, confined to particular charge during retention of possession by vendor.
  (*b.*) General, extending to general balance of accounts.

(2.) On lands, commencing when possession delivered to purchaser. Lien for unpaid purchase-money.

(3.) Solicitor's lien.
  (*a.*) Particular, on fund or property recovered for his costs of the suit, which may be *actively* enforced under the 23 & 24 Vict. c. 127.
  (*b.*) General, on deeds and documents other than a will; a passive protection only, a mere equitable right to withhold from his client such things as have been intrusted to him *as a solicitor*, and with reference to which he has expended skill or labour. This lien is commensurate only with the client's right at the time of deposit, and extends merely to costs, and not to general debts. *In re Galland.*

(4.) Banker's lien. General, on securities deposited, extending to general balance of account, unless precluded by special contract.

Quasi liens are rights in equity equivalent to liens, such as legacies charged on land, vendor's lien for advances for improvements, joint-tenant's lien for costs of renewing lease.

Liens exist at law as well as in equity, but it should be noted that liens in equity are wholly independent of the possession of the property, and are enforced by sale by order of

court. Under the Innkeepers Act, 1878 (41 & 42 Vict. c. 38), innkeepers have a power of sale over goods left in their custody after six weeks' possession, upon giving due notice in London and local newspapers.

CHAPTER XX.

PENALTIES AND FORFEITURES.

WHENEVER a penalty or a forfeiture is inserted in an instrument merely to secure the performance of some act or the enjoyment of some right or benefit, equity regards such performance or enjoyment as the principal, and the penalty or forfeiture as a mere accessory, and will give relief by ordering compensation in lieu. *Sloman* v. *Walter; Peachy* v. *Somerset.*

The test as to whether relief will be given depends upon another question—Can compensation be made? If so, relief will be afforded on payment of principal and interest, or ascertained damages, as the case may be.

On the other hand, a person will not be allowed to avoid his contract by paying the penalty inserted to secure its performance. But where, by the contract, a person has an option to do one of two things, paying higher for one alternative than the other, he may do so. *French* v. *Macale.*

As to whether a sum stipulated to be paid on breach of an agreement is a penalty or liquidated damages, the following rules have been laid down:—

(1.) Smaller sum of money secured by larger—a penalty.

(2.) Agreement to do several things, and one sum for breach of *any* or *all*, which sum would in some instances be too large, and in others too small—a penalty. *Kemble* v. *Farren.*

(3.) Where sum to be paid is proportioned to the extent of the particular breach, or where damages on breach of one or several stipulations cannot be measured—liquidated damages.

(4.) Where only one event on which sum to be paid, and no means of measuring damage—liquidated damages.

(5.) Mere use of either term is not conclusive.

(6.) Equity leans towards construing sum to be a penalty.

In the case of deposits, however, the contract must be carried out or the deposit may be forfeited.

In the case of a mere money bond the obligee cannot issue a specially indorsed writ to recover the penalty.

Tuther v. *Caralampi.*

Forfeitures.

The same general principles apply, except in cases of leases, as to which equity had power to relieve from forfeiture for non-payment of rent, but apparently not for other breaches of covenant, *e.g.*, to repair or insure.

Under the 22 & 23 Vict. c. 35, equity was empowered to relieve against forfeiture for non-insurance, and now, by the Conveyancing Act, 1881, s. 14, which applies to all leases whenever made, and notwithstanding any stipulation to the contrary, relief may be given upon such terms as the court thinks fit, in every case of forfeiture for breach, except—

(*a.*) Covenant against assigning or underletting.

(*b.*) Condition of forfeiture on bankruptcy or execution.

(*c.*) Covenant to permit inspection in a mining lease.

The Conveyancing Act, 1892, extends the benefit of the foregoing section to underleases, and agreements for leases where the lessee has become entitled to have his lease granted; and further provides that relief may be given in Case (*b.*) within one year from the bankruptcy or execution, except in the case of agricultural leases and leases of mines, public-houses, dwelling-houses with use of furniture, and property with respect to which the personal qualifications of the tenant are of importance.

Note, the relief to which under-lessees are entitled under the Act of 1892 is not restricted to cases in which the original lessee could have claimed relief.

Imray v. *Oakshette; Wardens of Cholemly School* v. *Sewell.*

No relief is given under the Conveyancing Acts after actual entry by the lessor for forfeiture; nor is any relief afforded by equity against *statutory* penalties or forfeitures.

CHAPTER XXI.

MARRIED WOMEN.

At common law the husband on marriage became entitled to the rents and profits of the wife's realty during their joint lives, and after issue born during his whole life, if he survived her, as tenant by the curtesy. He also became entitled to the wife's personalty absolutely, subject to the necessity for reducing her choses in action into possession.

The husband is said to have acquired this interest in his wife's property in consideration of the obligation of maintaining her, which he undertook upon the marriage. Although the rule may have worked no practical wrong so long as this duty was duly performed, yet its injustice became manifest in cases where the husband failed to do so, or became bankrupt or otherwise impoverished, so as to leave his wife destitute, no matter how extensive a fortune he might have derived from her. As a result, equity began to recognise a right in a married woman to enjoy property apart from her husband, notwithstanding the common law doctrine that she was unable so to do, her very existence being deemed merged by the marriage in that of the husband.

Firstly, Of the Wife's Separate Estate.

I. The Equitable Doctrine of Separate Estate apart from Legislation.

The wife's separate estate may exist in property of every kind, and arises principally by—

(1.) Ante-nuptial agreement.
(2.) *Special* post-nuptial agreement, or on desertion, or by virtue of a separation deed.
(3.) Absolute gift to wife's *separate use* by husband.
(4.) Absolute gift to wife by stranger.
(5.) Wife's separate trading.
(6.) Express limitation to separate use.

In all cases of the kind it was usual to interpose trustees, in whom the legal property was vested; indeed, such trustees were formerly considered indispensable; but this has now long been

settled not to be so. In the absence of trustees, the husband, in whom the legal estate vests, will hold as trustee for the wife.

No particular form of words is necessary to create a separate use, so long as an absolute intention appears to exclude the husband's marital right. The words most usually adopted are "for her sole and separate use," or "for her separate use" only.

Married Woman's Power of Disposition over Separate Estate, Irrespective of Legislation.

It has been laid down that a "*feme covert* acting with respect to her separate property is competent to act in all respects as if she were a *feme sole.*" *Peacock* v. *Monk; Hulme* v. *Tenant.*

(1.) As to personalty. She may dispose of it, whether in possession or in reversion, in the same manner in every respect as if she were a *feme sole.* *Fettiplace* v. *Gorges.*

(2.) As to realty.

(*a.*) Life estates. She has the same power of disposition as if she were a *feme sole.*

(*b.*) Fee-simple or fee-tail estates. She cannot dispose of the *legal estate* without the concurrence of her husband and a duly acknowledged deed; but it has now been settled that she may dispose of the *equitable estate* either by will or instrument *inter vivos,* without the concurrence of her husband and without acknowledgment, *Taylor* v. *Meads; Pride* v. *Bubb.* and whether trustees are interposed or not, *Hall* v. *Waterhouse.* which disposition will bar the husband's right to curtesy. *Cooper* v. *Macdonald.*

(3.) As to all separate estate.

(*a.*) It is liable for her breaches of trust (where she is an "actual actor"), unless subject to a restraint against alienation.

(*b.*) The savings of income are also separate estate, and she has the same power of disposition over them as over the capital. *Gore* v. *Knight.*

(*c.*) The income which she permits her husband to

receive cannot, as a rule, be recalled; and even where she is entitled to an account, it is for one year only.

(*d.*) Upon her death without having exercised her power of disposition, the separate use drops off, and the property (whether separate property by express limitation or by virtue of the Married Women's Property Act, 1882), devolves as at Common Law; that is to say,

1. If personalty, goes to the husband
   Jure mariti, as to personal chattels and chattels real.
   As administrator, as to choses in action.
   Proudly v. *Fielder*.
2. If realty, goes to the wife's heir; subject to the husband's right to curtesy.

} Subject to wife's debts where her separate estate would be liable if wife living.

Note, the Married Women's Property Act, 1882, has not altered the devolution of the undisposed-of estate of a married woman, and the right of her husband accrues just as if separate use had never existed. *In re Lambert's Estate.*

Nor has that Act rendered it necessary for husband to take out administration in respect of wife's chattels in possession.

Surman v. *Wharton.*

Property subject to a general power of appointment of a married woman *actually exercised* by her in favour of volunteers was formerly held *not* to be assets for payment of her debts, the rule being directly the reverse of that existing in the case of a man; the reason being the distinction which existed between separate estate and powers of appointment, the latter having been always recognised at common law.

But now under the Married Women's Property Acts, the appointed property is made assets for payment of a married woman's debts, wherever her separate estate would be assets.

Re Ann, Wilson v. *Ann.*

If, however, the power has *not been exercised*, the debts and engagements of a married woman cannot prevail against the parties entitled in default of appointment.

Contracts of a Married Woman.

Formerly a married woman could not *contract* so as to bind her separate estate. This disability has been removed by slow degrees. Thus her separate estate was held bound by—

(1.) Instruments under seal. *Hulme* v. *Tenant.*

(2.) Bills or notes. *Murray* v. *Barlee.*

(3.) Ordinary written agreements. *Picard* v. *Hine.*

(4.) Ordinary simple contracts even by *parol*, where it is clear that the married woman is contracting, not for her husband, but for herself.

Matthewman's Case; Johnson v. *Gallagher; Vaughan* v. *Vanderstegen.*

This last result was attained only after a prolonged struggle. The distinction drawn between written and verbal contracts is said to have arisen from viewing the engagements of a married woman as operating either as the execution of a *power* which could not be effected by parol, or by way of *charge* or disposition, which must be in writing. As soon as it was clear that such engagements operated by way of contract and not of disposition, all reason for the distinction vanished.

With regard to the liability of a married woman's separate estate for her *general* engagements or contracts, note—

(1.) Such engagements only bound separate estate belonging to her at date of entering into them.

Pike v. *Fitzgibbon; Barber* v. *Gregson.*

(2.) They only bound separate estate not subject to restraint on alienation, and which so remained at date of judgment.

(3.) The court has no power to restrain a married woman from disposing of her separate estate between dates of contract and judgment. *Robinson* v. *Pickering.*

(4.) No *personal* judgment was made against a married woman, and she could not therefore be made bankrupt in respect of her separate estate. *Re Hencage.*

(5.) Such engagements bound the *corpus* of her separate personalty, but only the rents and profits of her separate realty. *Hulme* v. *Tenant.*

But this restriction in respect of her realty no longer exists, the execution extending to all separate estate which

the married woman is not effectually restrained from alienating.

A claim against a married woman possessed of separate estate is capable of being barred by the Statute of Limitations. *Hallet* v. *Hastings.*

Restraint on Anticipation.

In order to protect a married woman's separate estate against the undue influence of her husband or others, Equity allowed her to be restrained from anticipating or alienating it.

Pybus v. *Smith.*

Such a restraint is invalid in the case of a man, being void for repugnancy; *Brandon* v. *Robinson.*

but is allowed to a married woman, since it is consistent with, and in furtherance of, the very object of a separate estate. Apparently the restraint against alienation is within the Perpetuity Rule.

With regard to this restraint on alienation, note—

(1.) It gives the married woman the present enjoyment of an *inalienable estate* independent of her husband.

(2.) Separate estate, whether with or without restraint, exists only *during coverture.*

(3.) It depends on, and is a modification of, separate estate, and has *no independent* existence.

(4.) It is inoperative or *disattaches* during discoverture, but *reattaches* on every subsequent marriage if apt words are used. *Tullet* v. *Armstrong.*

It is not rendered inoperative by a protection order or decree for judicial separation. *Hill* v. *Cooper.*

(5.) No particular form of words is necessary, provided the intention be clear. Thus the words "not to be sold or mortgaged" have been held to be sufficient;

Field v. *Evans.*

but a right to receive "with her own hands from time to time," on her receipts alone, "for what should be actually paid to be good discharges," not so. *Parkes* v. *Whyte.*

(6.) When discovert, a woman may so deal with her estate as to absolutely determine the trust for her separate use, and thus acquire it unfettered, by selling it and receiving the purchase-money. *Wright* v. *Wright.*

And now, upon her re-marriage, she holds the property in respect of which she has determined the restraint as her separate property under the Married Women's Property Act, 1882.

(7.) Equity had no power to dispense with the restraint, even for the benefit of the married woman;

Robinson v. *Wheelwright.*

but the restraint did not prevent her barring an estate tail. *Cooper* v. *Macdonald.*

When the fund to which a married woman is entitled for her separate use without power of anticipation is *in court*, it may be paid out to her during coverture if such restraint is not a continuing one, but otherwise only the income will be paid to her, whether the fund is an income-bearing one or not.

And now, by the Conveyancing Act, 1881, s. 39, the court may, where it appears to be for the *benefit* of a married woman, with her consent, make a judgment or order binding her separate property, notwithstanding she is *restrained from anticipation.*

This section does not give the court a *general* power of removing the restraint, but only a power to remove the fetter in respect of a particular disposition. *Re Warren's Settlement.*

The court will not exercise this power unless satisfied that to do so will be for the benefit of the married woman herself; it will not consider her husband or children.

If harassed by her creditors, the court will remove the restraint on the request of a married woman, so as to enable her to pay her debts. But the court will not remove the restraint where, by so doing, there is a risk of the life-interest being forfeited.

The consent required by the Act need not be given by an acknowledged deed.

There is no estoppel by deed against a married woman in respect of property which is subject to restraint.

Bateman v. *Faber.*

Independently of the Married Women's Property Act, 1882, the court has no jurisdiction to charge the costs of an action improperly instituted by a married woman upon the future income which she is restrained from anticipating.

Ellis v. *Johnson.*

But under the Married Women's Property Act, 1893, the

court may order the costs of litigation of a married woman to be paid out of her separate estate which she is restrained from alienating.

And by the Trustee Act, 1893, her separate estate, although subject to restraint, may be impounded to make good losses occasioned by her breach of trust; but the court will not readily lift off the restraint for such a purpose.

The foregoing notes dealing with a married woman's power of disposition over separate estate, state the rules of equity *apart from legislation.* We now proceed to consider the modifications which have been made by the Legislature.

II. Legislative Extensions of the Doctrine of Separate Estate.

First, The Divorce Acts.

By the Divorce Act, 20 & 21 Vict. c. 85 (now styled "The Matrimonial Causes Act, 1857," amended by 21 & 22 Vict. c. 108), a wife *judicially separated* is deemed a *feme sole* as regards her property acquired subsequently to the separation, and for purposes of contracts, torts, suing and being sued; and in case of subsequent cohabitation she will hold her property to her separate use. Further, a wife *deserted* by her husband may obtain a *protection* order, whereby her earnings and subsequently acquired property would in effect belong to her for her separate use. But a restraint on anticipation annexed to separate estate still attaches although a protection order or judicial separation has been obtained. *Hill* v. *Cooper.*

By the Summary Jurisdiction (Married Women) Act, 1895, a *judicial separation* may in effect be decreed by order of magistrates where the husband is convicted of an aggravated assault upon the wife, or of persistent cruelty to her, or of wilful neglect to maintain her, and the order may provide for a weekly allowance to be paid by the husband to the wife, after proof of means has been given.

The effect of an actual divorce is to make the wife a *feme sole* as to all her unsettled property.

In Equity, independently of these statutes, a deserted married woman is deemed to hold her subsequently acquired property for her separate use.

Second, The Married Women's Property Acts, 1870 and 1874.

By the Act of 1870 (33 & 34 Vict. c. 93), which came into force on 9th August 1870, in effect—

(1.) Wages and earnings of any married woman trading separately from her husband, *acquired after* the passing of the Act, and all investments thereof, were made her separate property.

(2.) In the case of a woman *married after* 9th August 1870, personalty to whatever extent, and rents and profits of realty devolving upon her *ab intestato*, and any sums not exceeding £200 coming to her under a deed or will, were made her separate property.

As to such real estate, she could not dispose of it except by deed acknowledged. *Johnson* v. *Johnson.*

(3.) The husband of a woman *married after* 9th August 1870 was exempted from all liability for her *ante-nuptial debts*, and she was made exclusively liable therefor to the extent of her separate property.

Prior to this enactment, a man by marriage rendered himself liable for all his wife's ante-nuptial debts, a liability, however, which ceased on the wife's death, unless he took out administration to his wife's choses in action. *Heard* v. *Stamford.*

A married woman is personally liable at common law for her ante-nuptial debts, and this liability is not affected by the Married Women's Property Acts. *Robinson* v. *Lynes.*

By the Act of 1874 (37 & 38 Vict c. 50) this provision was repealed so far as any woman *married after* 30th July 1874 was concerned, and it was provided that the husband and wife might be sued *jointly* for any such debts, but that the husband should only be liable therefor (or for his wife's ante-nuptial torts) to the extent of any property of the wife in which he had acquired an interest by the marriage.

Third, The Married Women's Property Acts, 1882, 1884, and 1893.

The Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), came into force on 1st January 1883, and repealed the

Acts of 1870 and 1874, without prejudice, however, to any acts, rights, and liabilities done, acquired, or incurred thereunder.

Under this Act,

(1.) *All* property whatsoever, whether real or personal, including the wages and earnings of any separate employment, belong to a married woman as her separate property, provided, in the case of a woman married—

(*a.*) On or after 1st January 1883, it belongs to her at time of marriage or comes to her afterwards.

(*b.*) Before 1st January 1883, her *title* to it accrues *after* that date.

The title which accrues under exercise of a power is deemed to accrue from the date of the operation of the appointment.

(2.) Deposits, consols, Government annuities, stocks, shares, debentures, &c., standing in or transferred into the sole name of a married woman, or her name jointly with that of any other person than her husband, are to be deemed her separate property in the absence of proof to the contrary, and any liability in respect thereof will be incident to her separate estate only, and not attach to her husband. Investments made in fraud of the husband or his creditors will be deemed to remain *his* property.

Formerly investments of *capital*, the separate estate of a married woman, did not always remain her separate property; *Wright* v. *Wright.*

but under this section they will always be so.

(3.) Under section 1 a married woman may hold and dispose of her separate property without the intervention of trustees, and in respect and to the extent thereof is capable of contracting, and of suing and being sued, either in contract or tort, or otherwise, as if she were a *feme sole*, and without her husband being made a party to any proceedings by or against her. And by the Act of 1893, her contracts (otherwise than those entered into as agent) are rendered binding on all separate property belonging to her either at the time of contracting or subsequently (whether she has any such property at the date of the contract or not), and also on all property she is for the time being entitled to while discovert.

(*a.*) A married woman is now able to convey even the *legal* estate of her separate real estate without the concurrence of her husband and without an acknowledged deed. *Riddell* v. *Erington.*

(*b.*) The Acts of 1882 and 1893 expressly provide that nothing therein contained shall interfere with or render inoperative any restraints on alienation. The separate property of a married woman which is subject to restraint is therefore placed beyond the reach of her creditors, except with her consent and for her benefit, by an order of court under the Conveyancing Act, 1881.

But under the Married Women's Property Act, 1893, when a married woman is *plaintiff*, the court may order payment of the costs of the opposite party out of her separate property, subject to restraint.

But if income of separate estate subject to restraint actually accrued due at or before the date of the judgment, has not been in fact paid over to her, it is free from restraint and is liable to be taken in execution. *Hood Barrs* v. *Heriott.*

(*c.*) A married woman is, for the future, rendered liable upon all her contracts to the extent of her separate property, contracting a proprietary liability.

Pelton v. *Harrison; Scott* v. *Morley.*

Under the Act of 1882, in order that her contracts might bind separate property acquired subsequently to the contract, it was absolutely necessary for her to have *some* separate property at the time with reference to which she might be reasonably deemed to contract, and the *onus* of proving this was on the plaintiff.

Deakin v. *Lakin; Palliser* v. *Gurney; Leek* v. *Driffield.*

But now, as has been noted, the Act of 1893 enables the creditor of a married woman to obtain payment out of any property (not subject to restraint) she may possess at time of execution.

A married woman may enter into a contract with her husband. *Butler* v. *Butler.*

(*d.*) The husband, notwithstanding this provision, remains liable for the *post*-nuptial torts of his wife;

Seroka v. *Kattenberg.*

but is not liable to be sued by her for a defamatory libel. *Reg.* v. *Lord Mayor of London.*

(*e.*) As regards the will of a married woman, the Act of 1882, applied only to property acquired during the coverture, and so property acquired after or in consequence of the husband's death did not pass under her will executed during her lifetime.

In re Price, Stafford v. *Stafford.*

This is no longer so, as the Act of 1893 provides that the will of a married woman made during coverture is to be construed with reference to the property comprised in it as speaking from death of testatrix.

(*f.*) These Acts do not enable a married woman to dispose of property by will in cases where she is prohibited by *statute* from so doing. *Clements* v. *Ward.*

(*g.*) Final judgment on default or under R.S.C. Ord. xiv. may now be signed against a married woman, but execution can only issue against separate property, and after judgment a receiver can be appointed of her separate property which is not subject to restraint on alienation. *Perks* v. *Mylrea;*

Gunston v. *Maynard; Robinson* v. *Lynes.*

(*h.*) It will be observed the rule laid down in *Pike* v. *Fitzgibbon* as to non-liability of after-acquired property (*ante*, p. 114) is now reversed in respect of contracts entered into subsequently to the Act.

Turnbull v. *Forman.*

(4.) A married woman, trading separately, may be made a bankrupt in respect of her separate property as if she were a *feme sole;* but she cannot be made bankrupt unless she is trading separately;

Re Helsby; Re Gardiner, Ex parte Coulson.

and even if so trading, a bankruptcy notice cannot be issued against her. *Re Lynes.*

But she may be made bankrupt after she has ceased to so trade in respect of debts incurred whilst trading.

Re Diagnall.

A general power of appointment vested in her will not pass to her trustee in bankruptcy, as it is not deemed included under the term "separate property;" nor can she be ordered to exercise such a power in favour of the trustee under sec. 44 of the Bankruptcy Act, 1883. *Re Armstrong.*

But property settled to her separate use without restraint on alienation passes to the trustee in bankruptcy. *Re Onslow.*

A committal order under the Debtors Act, 1869, cannot be made against a married woman, even after proof of means, as a judgment against her is not a personal one, but only a charge on her separate estate, *Draycott* v. *Harrison.* although she may be carrying on a trade separate from her husband; *Scott* v. *Morley; Down* v. *Fletcher.* except as to debts enforceable by committal under specific statutes, such as rates, *Re Allen.* or ante-nuptial debts. *Robinson* v. *Lynes.*

If a married woman lend money to her husband for the purpose of his business, and he becomes bankrupt, although entitled to prove, she will be postponed to all his other creditors for value.

And the same rule applies if the husband die insolvent and his estate is being administered in Chancery. *Tain* v. *Emmerson.*

But this rule has no application to a loan made by the wife to a firm in which her husband is a partner.

(5.) A married woman may be an executrix, administratrix, or trustee without the consent or concurrence of her husband, and in that capacity sue or be sued and transfer property; and will be alone liable for her breaches of trust and devastavits, unless her husband has intermeddled.

The husband, therefore, need not be a party to the administration bond where his wife is administratrix. *Re Ayres.*

A married woman, being a trustee (other than a *bare* trustee), cannot convey real estate by an unacknowledged deed. *Re Harkness and Alsop.*

(6.) A woman *married after* 31st December 1882 is liable for her *ante*-nuptial debts, contracts, and torts; and the law as to the liability of the husband for his wife's ante-nuptial debts is entirely altered.

(*a.*) He can now be sued without her, whether she be living or dead.

(*b.*) He can be sued with her, if the plaintiff seeks to establish his claim in whole or in part against both husband and wife.

(*c.*) His liability is no longer unlimited as at common law; it is limited to the value of the wife's property which he may have acquired.

(*d.*) As between him and her, he is entitled to be indemnified out of her separate property. *Beck* v. *Pierce.*

(7.) A married woman has the same remedies, civil or criminal, for the protection of her separate property as if she were a *feme sole*, in enforcing which husbands and wives are competent witnesses against each other. But no *criminal* proceedings can be taken by husband or wife against the other except when living apart, nor even then, in respect of any act done whilst living together, unless done at the time of desertion.

And in any such criminal proceedings the Act of 1884 enacts that the husband and wife shall be competent and admissible witnesses, and, except where defendant, compellable to give evidence.

(8.) A married woman, to the extent of her separate property, is (concurrently with her husband) liable for the maintenance of her pauper husband, children, and grandchildren.

(9.) A policy of assurance may be effected by either husband or wife on the life of the husband for the separate use of the wife, or so as to create a trust for wife and children. The wife may also insure her own life for the same purpose. If fraudulent against creditors, they will be so far void.

Under a policy effected for the benefit of wife and children, they take as joint-tenants.

If no trustee be appointed either by the policy itself or otherwise, the legal personal representative of the assured is made the trustee, or the court may appoint a trustee.

(10.) Existing and future settlements made before or after marriage, and the operation of restraints upon alienations, are not in any way affected by these Acts.

Hancock v. *Hancock*; *Stevens* v. *Trevor Garrick.*

But no restraint against alienation imposed by a woman *upon herself* shall be valid against her ante-nuptial debts; and settlements that would be fraudulent against creditors if made by a man will be equally fraudulent against her creditors.

(11.) A married woman becomes "discovert" within the meaning of the Statute of Limitations (21 Jac. I. c. 16) at the date of the commencement of the Act; *Lowe* v. *Fox.*

(12.) Upon the death of his wife the husband's right to curtesy remains as before the Act; *Hope* v. *Hope.*

But her creditors may have her separate estate administered by the Court. *Surman* v. *Wharton.*

Secondly, Pin-Money and Paraphernalia.

I. Pin-money.

Pin-money has been defined as a yearly allowance settled upon the wife *before marriage* for the purchase of clothes or ornaments, or otherwise for her separate personal expenditure suitable to her husband's rank.

It presents the following peculiarities, to explain which the object for which it is given must be remembered. The wife can claim—

(1.) Only *one year's* arrears on her husband's death.

(2.) *All* arrears where it appears that she has complained and all has been promised.

(3.) *No* arrears where the husband has paid for all her apparel and private expenses.

(4.) Her *executors* can claim *no* arrears.

II. Paraphernalia,

The wife's paraphernalia (παραφερνη), things to which she is entitled over and above (παρα) her dower (φερνη), consist of apparel and ornaments suitable to her rank and condition, given to her as ornaments of her person; but such gifts may be made by the husband to the wife absolutely and for her separate use. With regard to paraphernalia, note—

(1.) Jewels and trinkets (except old family jewels) given to wife by husband are generally considered as paraphernalia.

(2.) Gifts to the wife by a relation or friend, before or after marriage, will be considered gifts to her separate use.

(3.) Wife cannot dispose of it during husband's lifetime; but husband may do so by act *inter vivos*, although not by will.

(4.) It is subject to the husband's debts, but assets will be marshalled in the widow's favour so as to rank her claim next to creditors.

(5.) Where husband pledges it, the wife can have it redeemed out of his personal estate.

(6.) The Married Women's Property Acts have not abolished paraphernalia. *Tasker* v. *Tasker.*

Thirdly, The Wife's Equity to a Settlement and her Right of Survivorship.

By marriage the husband becomes (apart from the Married Women's Property Acts) *prima facie* entitled to all his wife's personal property not being separate property. Where, however, being unable to recover at law, the husband was compelled to resort to equity in order to retain the property, Equity would only lend its aid and allow him to receive it, subject to his making a fair settlement on the wife out of it; that is to say, subject to the wife's *equity to a settlement*, unless indeed she had waived it or was otherwise debarred.

This equity to a settlement does *not* depend upon any right of property in the wife, for the amount is in the discretion of the court, and can only be claimed for herself *and* children. It arises from the maxim, "He who seeks equity must do equity;" the court refusing its aid to the plaintiff husband till he has made proper provision for his wife.

The right of the wife, which was originally against the husband only, was extended to his trustee in bankruptcy and to purchasers from him for valuable consideration. Finally, it was established that the wife may actively assert her right as *plaintiff.* *Elibank* v. *Montolieu.*

The wife's right was only recognised, as a general rule, in respect of property of an *equitable* nature, to the entirety of which the wife would *not* have been entitled by *survivorship*, and which there was a possibility of the husband obtaining *wholly* for himself. Thus in respect of—

(I.) Leaseholds—wife had an equity out of her *equitable*, but not, as a rule, out of *legal* interest therein.

(II.) Pure personalty—of a *legal* nature, wife had *no* equity; but where of an *equitable* nature, if

(1.) An *absolute* interest, wife had an equity which, as has been stated, prevailed against purchasers from her husband.

(2.) A mere *life interest*, the wife had no equity as a general rule, for no provision in such a case could be made for her children; that is to say,

(*a.*) While husband properly maintained his wife, she had no equity;

(*b.*) On his failure so to do, her equity arose.

(*c.*) Purchaser not bound to inquire as to maintenance, and wife had no equity against a purchaser without notice *previous* to husband's desertion or bankruptcy.

(*d.*) Wife had an equity against trustee in bankruptcy, for such trustee had notice *ex hypothesi* that husband was incapable of maintaining wife.

(*e.*) No equity arose in respect of arrears of income.

(III.) Realty.

(1.) Of *inheritance*—whether of a legal or an equitable nature—wife had *no* equity, because she had something better, namely, the estate itself, the equity attaching on what the husband takes in right of the wife, not what the wife takes in her own right.

Life Association of Scotland v. *Siddall.*

(2.) *Life estate*, wife had an equity—if of an equitable nature, but *not* if legal. *Sturgis* v. *Champneys.*

The equity of the wife might be defeated by alienation in the following manner:—

(I.) As to realty—married woman might validly alienate by means of a duly acknowledged deed, with the concurrence of her husband, whatever its nature;

3 & 4 *Will. IV.* c. 74; 8 & 9 *Vict.* c. 106.

Tuer v. *Turner; Briggs* v. *Chamberlain.*

but not a mere *spes successionis.* *Allcard* v. *Walker.*

(II.) As to personalty—if in *possession*, husband might dispose thereof; but if in *reversion*, the power of disposition (except so far as Malins' Act, 20 & 21 Vict. c. 57 applied)

was in abeyance, and the court had no power to assist such a disposition. The wife's choses in action belonged to the husband or his assignee, if, and only if, he reduced them into possession. Thus—

The wife, if she survived her husband, became entitled, by *right of survivorship*, to all her equitable REVERSIONARY interests in PERSONALTY which the husband had not reduced into possession, and no disposition thereof made by husband or wife, or both, was of any avail to defeat this right.

Purdew v. *Jackson; Whittle* v. *Henning.*

The wife had no equity to a settlement of *reversionary* interests whilst they continued reversionary. For her equity only arose when the fund was ready to be reduced into possession, being in fact a right attached not upon the property, but upon the right to receive it. The right existing in respect of reversionary interests is a right of *survivorship*, and not to an equity.

The possible effects, therefore, of an assignment by the husband of the wife's reversionary interest were—

(1.) If husband died before wife and before reversionary interest fell in, purchaser took nothing.

(2.) If it fell in during their joint lives, purchaser took it subject to wife's equity.

(3.) If wife died before husband, and then it fell in, purchaser took it absolutely.

The question of what amounted to a reduction into possession depended on the circumstances of each case, but a mere assignment was not sufficient; *Hornsby* v. *Lee.* nor transfer by husband of title-deeds where his wife was equitable mortgagee; but an order of court to pay wife's income to a receiver has been held to be sufficient.

Tidd v. *Lister.*

By Malins' Act (20 & 21 Vict. c. 57), however, it was provided that—

(1.) A married woman might, with the concurrence of her husband, by deed acknowledged,

(*a.*) Dispose of her reversionary interest in personalty.

(*b.*) Release her equity to a settlement out of personalty in possession.

(2.) The Act has no operation where

(*a.*) Interest of married woman is acquired under her marriage settlement, or by an instrument made *before* 31st December 1857.

(*b.*) Married woman is restrained from alienation.

The settlement to which a wife's equity extended must have been made on wife *and* children, notwithstanding the right of the wife to waive it and thus deprive her children. Equity recognised no original right in the children to claim any settlement. Note, therefore—

(1.) During her life, wife (unless an infant) might waive her right at any time before the settlement was complete. After completion children's right was established.

(2.) After wife's death, if she died—

(*a.*) Before asserting her equity by action,
(*b.*) After action brought, but before judgment.
} Children had no right.

(*c.*) After judgment, children's right established.

(*d.*) Apart from the judicial proceedings, if the husband was bound by contract, children's right could be enforced.

The wife's equity might be defeated involuntarily, as well as voluntarily waived by her, viz.:

(1.) By receipt of fund by husband or his assignees.

Murray v. *Elibank.*

(2.) Where wife's ante-nuptial debts exceeded the fund.

(3.) Where adequate settlement already made on wife.

(4.) By wife living in adultery apart from husband, unless he also was doing so.

(5.) By wife's fraudulent suppression of her coverture.

As to the amount of settlement, the general rule was for one *half* to be settled on wife and children; but where fund was very small, or the husband had deserted his wife and was not maintaining her, the *whole* of it was settled. Where, however, the husband was solvent and maintaining the wife, the court would only settle the fund so as to give the wife a chance of taking it by survivorship. In framing a settlement, the court directed the ultimate limitations, in default of issue, to be to the husband absolutely, whether he survived his wife or not.

With regard to the validity of settlements made in consideration of the wife's equity, note—

(1.) A settlement made by husband *after reduction* of property into possession must conform to 13 Eliz. c. 5. As to the effect of the Bankruptcy Act, 1883, *vide ante*, p. 21.

(2.) A settlement ordered by the court will be supported as based on valuable consideration.

(3.) A settlement made by husband of wife's property which trustees otherwise refuse to part with, is also good.

The whole of this section dealing with a wife's equity to a settlement and her right of survivorship must now be read subject to the operation of the Married Women's Property Acts.

Practically, therefore, the wife's equity to a settlement is now OBSOLETE, or rapidly becoming so; for it is clear that the equity attaches upon what the husband takes in right of the wife, and not upon what the wife takes in her own right; and only those interests of a married woman falling into possession on or after 1st January 1883, and her *title* to which accrued *before* that date, are excluded from its operation. A reversionary interest which became vested in a married woman before, although falling into possession after, the Act, does not belong to her as separate property under the Act.

Reid v. *Reid*.

Fourthly, Settlements in Derogation of Marital Rights.

The former rule being that a husband upon marriage became thereby entitled to her property, any acts done by her secretly or in fraud of these marital rights, so as to disappoint the just expectations of her husband, were deemed null and void.

Strathmore v. *Bowes*.

The following points were established: Alienations or settlements made by a woman in the course of a treaty for marriage were deemed fraudulent and void against the husband—

(1.) If made without his knowledge, of property to which she had represented herself to him as entitled.

(2.) If made without his knowledge, although he did not know her to be possessed of the property aliened.

(3.) If made secretly, although meritorious.

(4.) If, and only if, made during treaty of marriage WITH HIM.

(5.) If, and only if, he had no notice thereof before marriage.

They were, however, not void—

(1.) Against a purchaser for valuable consideration without notice.

(2.) Against the husband, who had seduced the wife before marriage.

This branch of the law has been rendered OBSOLETE by the operation of the Married Women's Property Act, 1882, under which it appears that no alienations made by a woman during a treaty of marriage can (unless under very exceptional circumstances) be in derogation of marital rights, such rights having been practically abolished by the Act.

CHAPTER XXII.

INFANTS.

Guardians.

(1.) NATURAL guardian. The father is the natural guardian of his infant children; but the mother is the natural guardian of her illegitimate infant child.

By the Custody of Infants Act, 1873 (36 Vict. c. 12), the court may, on her application, grant to the *mother* the custody of her infant children until they attain the age of sixteen, where that is for the *benefit of the infants.*

This Act extended the operation of Talfourd's Act (2 & 3 Vict. c. 54), which only empowered the court to give the mother the custody of infants under seven.

By the Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), the *mother* is constituted the guardian of her infant children if she survive their father, either alone or jointly with any guardian appointed by the father.

(2.) Testamentary guardian. By 12 Car. II. c. 24 the father may by deed or will appoint a guardian for his infant

unmarried children. But not by will if he is himself a minor, for under the Wills Act (1 Vict. c. 26) the will of a minor is void. And by the Guardianship of Infants Act, 1886, the *mother* may by deed or will appoint a guardian of her infant unmarried children to act after the death of herself and the father, either alone or jointly with any guardian appointed by the father.

The father may delegate the power of appointing guardians after his death to another person. *Re Parnell.*

(3.) Guardian appointed by stranger standing in *loco parentis* cannot be set aside by the father, who has thus waived his own natural rights.

(4.) Guardian appointed by the court. The protection of infants belonged to the Crown as *parens patriæ*. This prerogative was delegated to the Court of Chancery, and the jurisdiction is exercised in Chancery as a branch of its general jurisdiction. *Eyre* v. *Shaftesbury.*

By the Judicature Act, 1873, s. 34, the wardship of infants and the care of infants' estate is assigned to the Chancery Division exclusively.

And under the Matrimonial Causes Acts the Divorce Division may make an order as to the custody of children during minority. *Thomasset* v. *Thomasset.*

An infant who is under a guardian appointed by the court is a *ward of court*, and the guardian is considered to be an officer of the court. The commencement of an action in the court relative to an infant's person or estate, or the making an order for maintenance on summons at chambers, or under the 36 Vict. c. 12, constitutes the infant a ward of court. But an infant is never constituted a ward of court unless possessed of *some property*. — *Wellesley* v. *Beaufort.*

The court may appoint a guardian, even if the child be resident abroad, and has no property here. *In re Willoughby.*

The court exercises jurisdiction over all guardians, and will even remove a father from being guardian where there is any serious and proximate danger to the infants arising from his guardianship, *e.g.*, where he is insolvent or neglecting their education, upon the principle that prevention of injustice is better than punishment. *Wellesley* v. *Wellesley.*

A divorced father may be declared unfit to continue the guardian of his children. *Skinner* v. *Skinner.*

And under the Guardianship of Infants Act, 1886, any Division of the High Court may, if satisfied that it will be for the welfare of the infant, remove any guardian and appoint another in his place.

And now, under the Custody of Children Act, 1891 (54 Vict. c. 3), the court has power to refuse to order the delivery up of a child even to its parent, if satisfied that the parent has deserted the child or is otherwise an unsuitable guardian.

These statutes do not affect the ancient equity jurisdiction.

The guardian selects the mode and place of education of his ward. *Hall* v. *Hall.*

But the infants must be brought up in the religion of their *father*, irrespective of their guardian, however appointed; *In re Scanlan.*

Unless father has indicated otherwise, *In re Agar Ellis.*

Or by his indifference or otherwise waived his right to control the religious education of his children, *Re McGrath.*

Or has abdicated his rights. *Re Newton's Infants.*

A guardian on taking a ward of court out of the jurisdiction must give security; and in deciding whether leave should be given, the court must consider—

(1.) Whether it is to the interest of the ward.

(2.) What security there is that the order of the court will be obeyed. *In re Callaghan.*

A guardian must not change the nature of the property except when such change is necessary for the benefit of the infant, for such conversion may not only affect the rights of the infant, but also the relative rights of his representatives. Where conversion is allowed, the representatives who would have taken before the change still take notwithstanding the change, if, but only if, the infant *dies under age.*

Foster v. *Foster*; *Jackson* v. *Talbot.*

Wards of Court.

(1.) Ward must not marry without permission of the court, notwithstanding parents or guardians may be living.

Persons conniving at such a marriage will be guilty of contempt of court, even if ignorant that the infant is a ward.

(2.) Guardian on being appointed must give recognisance that ward shall not marry without leave of the court.

Eyre v. *Shaftesbury.*

(3.) The court will restrain by injunction an intended improper marriage, and also communications from admirers.

(4.) Upon a marriage with consent, a settlement must be made, to be approved by the court.

(5.) A ward who has ceased to be so by coming of age, and wishes to waive a settlement, will be protected by the court if possible.

Under the Marriage Act (4 Geo. IV. c. 76) a settlement may be decreed where infant has married without guardian's consent.

Under the Infants' Settlement Act (18 & 19 Vict. c. 43) binding settlements may be made by infants of their property with the leave of the court, where such infants are not under twenty if male, or seventeen if female.

Where an infant makes a settlement without any leave of the court, the settlement is not void, but voidable at the option of the infant on attaining twenty-one; *Duncan* v. *Dickson.*

but that option must be exercised within a reasonable time. *Edwards* v. *Carter; Farringdon* v. *Forrester.*

And where a married woman after attaining twenty-one, by *unacknowledged* deed affirms a settlement executed by her before marriage whilst an infant and without leave of the court, such settlement is binding on her. *Williams* v. *Knight.*

The father is bound to maintain his children irrespective of any property belonging to them, but where he is not able to give them an education suitable to the fortune they expect, maintenance will be allowed. He will always be entitled to an allowance for maintenance where there is an express *contract* to that effect. *Thomson* v. *Griffin.*

Under the Married Women's Property Act, 1882, a

married woman to the extent of her separate property is bound to maintain her children in case her husband be unable to do so.

In allowing maintenance the court almost always confines it to the income of the fund. Regard will be had to the condition of the family, and a liberal allowance will be made where parents are in distress, or other children are numerous and destitute. In all such cases it is the *infant's* benefit alone which is considered; and the guardian will not be called upon to account for any surplus, provided he properly maintains the infant.

CHAPTER XXIII.

LUNATICS, IDIOTS, AND PERSONS OF UNSOUND MIND.

ALTHOUGH the Court of Chancery is the legal guardian of infants, it is NOT the curator of the person or estate of a person *non compos mentis.* *Beall* v. *Smith.*

The jurisdiction in lunacy was originally vested in the Court of Exchequer on its revenue side, from which it was early transferred to the Lord Chancellor, and subsequently vested in the Lords Justices concurrently with the Lord Chancellor. The Judicature Acts preserved to the Lords Justices not only their jurisdiction in lunacy (which is expressly continued by the Lunacy Act, 1890), but also their original jurisdiction in Chancery. An appeal from their tribunal, therefore, lies not to the House of Lords, but to the Judicial Committee of the Privy Council.

Unsoundness of mind, *per se*, gives equity no jurisdiction whatever. It is not by reason of such incompetency, but in spite of it, that equity exercises its jurisdiction, and after inquisition found, proceedings in Chancery would be a contempt on the lunacy jurisdiction. The committee of a person *non compos* is an officer of the Court of Lunacy only, and must act under its direction even in making applications to the Court of Chancery.

Beall v. *Smith*; *Vane* v. *Vane.*

The Lunacy Act, 1890, makes special provision for the management and administration of lunatics' estates.

When the entire estate of the lunatic is below £2000 in value, or the income thereof does not exceed £100 per annum, the jurisdiction in lunacy is summary.

The rights of the creditors of a lunatic are subordinated to the needs of the lunatic; and if the lunatic become bankrupt his property vests in the trustee in bankruptcy, subject to his maintenance.

The allowance made for the maintenance of a lunatic is in the discretion of the court, and occasionally the near relations of the lunatic are indirectly benefited, the same principle applying as in the case of allowances made to infants.

The court will only allow the conversion of a lunatic's property where the change will be for the benefit of the lunatic himself; his interests alone will be consulted, and his representatives must take the fund according to its actual state. *Oxendon* v. *Compton.*

But, as a rule, the court protects the rights of the representatives.

In respect of the maintenance of a person of unsound mind not so found, the Chancery Division has no original or inherent jurisdiction, unless there are trusts to execute or the fund is paid into court.

Under the Lunacy Act, 1890, application may be made to the Masters in Lunacy for directions as to the management and administration of the property of a person of unsound mind not so found.

PART III.—THE ORIGINALLY CONCURRENT JURISDICTION.

THE concurrent jurisdiction of equity extended to cases where, although *some* remedy, yet no plain, adequate, appropriate, and complete remedy existed at law, and the aid of equity was invoked to give the exact relief required. Under the Judicature Acts the jurisdictions at law and equity are throughout concurrent; but notwithstanding this, the Chancery Division is still the appropriate jurisdiction in cases where, previous to those Acts, relief would have been sought in equity.

The concurrent jurisdiction embraces two branches. Cases in which—

Firstly, The ground of action itself constitutes the principal foundation for the jurisdiction, viz., accident, mistake, fraud.

Secondly, The peculiar remedies afforded by equity constitute that foundation, viz., suretyship, partnership, account, set-off, specific performance, injunction, and the like.

CHAPTER I.

ACCIDENT.

ACCIDENT, as remediable in equity, has been defined to be an unforeseen and injurious occurrence, not attributable to mistake, neglect, or misconduct.

To give equity jurisdiction, there must be or have been no adequate remedy at law, and the party must have a conscientious title to relief. Note, equity does not lose the jurisdiction it has always possessed merely because common law courts have been empowered to relieve.

Firstly, Equity will give relief against accident in cases of—

I. Lost and destroyed documents.
II. Imperfect execution of powers.
III. Erroneous payments.

I. Lost and destroyed documents.

(1.) *Lost* bonds or other documents under seal.

There was originally no remedy at law, because there could be no *profert* and *oyer* of the instrument. Further, equity alone could grant adequate relief by requiring an indemnity. Where *discovery only* without relief was sought, equity would grant it without any affidavit of loss or offer of indemnity: now an affidavit and indemnity is always required.

(2.) *Lost* title-deeds.

The mere loss of a deed does not give equity jurisdiction, for law gave and gives relief. There must be in addition special circumstances irremediable at law. Thus, where it was uncertain whether title-deeds were lost or concealed by the defendant, equity gave relief.

(3.) *Lost* negotiable instruments.

Here the proper remedy was in equity, because no remedy originally existed at law; and further, equity possessed the power of ordering an indemnity. The plaintiff should offer a sufficient indemnity before suing. By the Common Law Procedure Act, 1854, courts of law are empowered to order the loss not to be set up, and to give an indemnity. But equity is not thereby deprived of its jurisdiction.

East India Company v. *Boddam.*

(4.) *Lost* non-negotiable instruments.

Here equity has jurisdiction, but it is doubtful whether there is a legal remedy.

The Bills of Exchange Act, 1882, specially provides for the case of lost bills and notes, whether negotiable or not.

(5.) *Destroyed* negotiable and non-negotiable instruments and bonds.

No relief is given in equity, because there is an adequate remedy at law. *Wright* v. *Maidstone.*

II. Imperfect execution of powers.

(1.) Defective execution of simple powers.

Where there is the *ability* to exercise a power and a distinct *intention* to exercise it in favour of a certain class, Equity will aid the defective execution of it by compelling the person having the legal interest to transfer same in accordance with the defective appointment.

Equity will give relief in these cases in favour of—

(*a.*) Purchaser for value, including mortgagee,
(*b.*) Creditor,
(*c.*) Charity,
(*d.*) Wife,
(*e.*) Intended (but not actual) husband,
(*f.*) Legitimate (but not natural) child,

where, but only where, the defect is not of the very essence of the power, or not made irremediable by statute, *e.g.*, equity will supply the want of a seal or witness, or allow an execution by will which should have been by deed, but not *vice versa.*

Tollett v. *Tollett.*

(2.) Unexecuted powers.

Equity gives no relief in the case of *non*-execution of powers, except where

(*a.*) Execution is prevented by fraud.
(*b.*) Power is coupled with a trust.

Harding v. *Glynn.*

Trusts are always, but powers never, *imperative;* consequently where a trust-power is left wholly unexecuted, equity will relieve.

III. Erroneous payments.

(1.) In the case of accidental payments by executors or administrators acting in good faith, equity afforded protection; but there was originally no relief at law. No relief, however, will be given in case of mistake of law.

(2.) On bankruptcy of master, a minor apprentice could

recover in equity a proportionate part of premium paid. This is now provided for by the Bankruptcy Act, 1883, s. 41.

Secondly, No relief will be given in equity against accident.

I. In matters of positive contract.

For injury is not *unforeseen*, and might have been provided for; thus no relief is given from an absolute covenant to pay rent or to repair where the demised premises are destroyed.

II. In contracts where parties equally improvident against contingencies.

III. Where accident arose through gross neglect of party seeking relief.

IV. Where party seeking relief has no vested right, but a mere expectancy only.

V. Where party seeking relief has no greater title to protection of the court than the party against whom relief is sought, *e.g.*, a *bona fide* purchaser for value without notice.

CHAPTER II.

MISTAKE.

A MISTAKE, as remediable in equity, may be defined to be an act which would not have been done, or an omission which would not have occurred, but from ignorance, forgetfulness, inadvertence, mental incompetence, surprise, misplaced confidence, or imposition.

Mistake is either in respect of *law* or of *fact*. Equity can relieve against mistakes in law as well as against mistakes in fact, if there be any equitable ground for such relief.

I.—MISTAKE OF LAW.

It is a general rule both at law and equity that ignorance of law is no excuse, the maxim being, *Ignorantia legis haud excusat*.

This maxim, however, only applies to the general law of the country, and not to a mere private right.

Cooper v. *Phibbs.*

Accordingly money paid under a mistake of law may in general be recovered back.

Relief will be given, notwithstanding this rule, where

(1.) A party acts under ignorance of a plain and well-known rule of law, upon the principle of fraud or undue influence. *Lansdowne* v. *Lansdowne.*

(2.) Mistake of law is combined with surprise.

Where the mistake arises from ignorance of a doubtful point of law, a compromise, if entered into with honest intention and full disclosure, will be supported. Upon this ground family compromises are upheld, but there must always be full disclosure, and neither *suppressio veri* nor *suggestio falsi.*

Stapilton v. *Stapilton*; *Gordon* v. *Gordon.*

Equity will not relieve against a *bonâ fide* purchaser for value without notice, nor in respect of a compromise where the position of parties has been altered, in the absence of gross ignorance or imposition.

Mistake as to foreign law is deemed mistake of *fact.*

II.—Mistake of Fact.

As a general rule, equity gives relief against mistake of fact where the fact is

(1.) Material, whether mistake be unilateral or mutual; even if the agreement has been sanctioned by the court. *Paget* v. *Marshall*; *Cochrane* v. *Willis*; *Huddersfield Bank* v. *Lister.*

And (2.) Such as party could not ascertain by inquiry;

And (3.) Such as contracting party having knowledge is under a legal obligation to disclose.

Where, however, the means of information is equally open to both parties, and there is no confidence reposed, no relief will be given.

Oral evidence is admissible, notwithstanding the Statute of Frauds, to show that by accident, mistake, or fraud a written agreement is not what the parties intended. The mistake must

not be of law, and must be expressly established or fairly implied from the nature of the case.

Thus a partnership debt, though joint at law, is considered in equity to be joint and several. *Kendal* v. *Hamilton.*

But where there is no inference of an original several liability, no relief will be given in equity without evidence of mistake. *Sumner* v. *Powell.*

As a general rule the remedy is

Rectification where the mistake is *mutual ;*

Rescission where the mistake is *unilateral.*

Relief will be given in Equity against Mistakes of Fact in the following particular cases :—

1. Rectification of mistakes in marriage settlements.
   (1.) Where both marriage articles and a definitive settlement exist before marriage.
      (*a.*) As a general rule the settlement is the binding instrument. *Legg* v. *Goldwire.*
      (*b.*) If the settlement purports to be, or can be shown by admissible evidence to have been intended to be, in pursuance of the articles, and there is a variance, the settlement will be rectified according to the articles.
   (2.) When the settlement is made after marriage, it will in all cases be controlled by the ante-nuptial articles.

      In no case will the *true contract* of the parties be varied. *Barrow* v. *Barrow.*

   The mistake in marriage contracts must be *mutual* or no relief will be given.
2. Instrument delivered up or cancelled under a mistake.
3. Defective execution of powers. Relief is given on the same general principles as in cases of accident.
4. Mistakes in wills. In order to relieve, the mistake must be apparent on the face of the will, and parol evidence is admissible to remove a latent ambiguity.
   (1.) Mere misdescription of legatee will not defeat legacy, unless given to legatee under a character which he has falsely assumed.

(2.) Revocation of legacy on mistake of fact, where such mistake constitutes the sole reason for the revocation, is a ground for relief. *Kendall* v. *Abbott.*

No Relief will be given against any Defects or Mistakes

(1.) Where party claiming relief has not a superior equity.
(2,) Between volunteers.
(3.) Where defect is declared fatal by statute; provided the statute expressly or necessarily excludes the equitable remedy.

Barrow v. *Isaacs; Hall-Dare* v. *Hall-Dare.*

CHAPTER III.

ACTUAL FRAUD.

FRAUD is infinite, and equity has always refused to lay down any general rule beyond which it will not go in affording relief. Although it is a rule both at law and in equity that fraud is not to be presumed, yet positive proof of fraud is not absolutely necessary, and equity practically acts upon weaker evidence than law in inferring it. Fraud is divided into two sections—actual fraud and constructive fraud.

An actual fraud has been defined as something said, done, or omitted with the design of perpetrating what the party must have known to be a positive fraud.

Actual frauds may be considered under two heads—

I. Frauds which receive that denomination from a consideration of the conduct of the guilty parties, irrespective of any peculiarity in the condition of the injured parties.

II. Frauds which receive that denomination mainly or in a great measure from a consideration of the peculiar condition of the parties upon whom they are practised.

(*Sm. Man.*, 67.)

I.—Frauds arising irrespective of any Peculiarity in the Position of the Injured Party.

(1.) Misrepresentation, or *suggestio falsi.*

A misrepresentation of a material fact intentionally made to mislead another amounts to a positive fraud, even when the person making the representation does not know it to be true or false, or believes it to be true if he ought to have known it to be false.

It is equally a fraud where, the misrepresentation being made to another, a third party acts upon it, and by so doing is injured or damnified; provided the misrepresentation was made with the intent that it should be acted upon by the third party in the manner that occasions the injury or loss.

Pulsford v. *Richards; Derry* v. *Peek.*

The case of *Derry* v. *Peek* overruled all the old cases, and settled that a man cannot now be sued for misrepresentation without fraud.

A misrepresentation, to be a ground of relief, must

(*a.*) Be of some material fact inducing the contract.

(*b.*) Be of something in which there is a confidence reposed, at least in cases of vendor and purchaser; and not be a mere matter of opinion.

(*c.*) Mislead the party to his prejudice.

Redgrave v. *Hurd.*

A company is responsible to the extent of the profits it has made thereby for the misrepresentations of its directors, but otherwise the remedy is against the directors personally, and the fraudulent directors are liable jointly and severally. No action lies against the executors of a deceased director further than the extent his estate has profited by his fraudulent misrepresentation.

Peek v. *Gurney.*

If a misrepresentation can be made good, the injured party has the option of compelling it to be done.

A person can derive no benefit from the fraud of another unless he is both free from any participation in it and has given a valuable consideration.

Bridgeman v. *Green.*

The defrauded party may deprive himself of relief by his subsequent acts amounting to ratification.

(2). Concealment, or *suppressio veri*.

Like misrepresentation, the concealment must be to the injury or prejudice of another, and the fact concealed must be one which the party was under a legal or equitable *obligation to disclose*. *Fox* v. *Mackreth*.

With regard to the sale of *personal chattels*, the rule is *caveat emptor*, unless there be some misrepresentation, or artifice, or warranty, or vendor is under an obligation to disclose.

Nam qui tacet non videtur affirmare, but in exceptional cases, such as *insurance*, silence is tantamount to direct affirmation; and the insured is bound to communicate to the insurer all facts and circumstances material to the risk within his knowledge.

(3.) Inadequacy of consideration.

Mere inadequacy of price does not by itself constitute a ground of relief; but inadequacy will be evidence of fraud where it is of such a character as to shock the conscience, or when it is coupled with other suspicious circumstances.

Apparent inadequacies may, however, be explained away. *Harrison* v. *Guest*.

No relief is given where the parties cannot be placed *in statu quo*, *e.g.*, in cases of marriage settlements.

(4.) Frauds by force of statute merely.

Under the Companies Act promoters are liable for concealment as well as misrepresentation; and any conveyance or disposition which would amount to a fraudulent preference in the case of the bankruptcy of an individual is constituted a fraudulent preference in the winding up of a company. And generally payment out of capital as if it were profit is a fraud for which directors are answerable to shareholders.

A company may not buy its own shares: but a company is not fraudulent merely because it is what is known as "a one-man company." *Salomon* v. *Salomon*.

(5.) Refusal of consent to marriage.

Gifts and legacies on condition of marriage with consent

will not be defeated by the fraudulent or corrupt withholding of such consent.

Note that contracts affected by fraud are in general not void, but only voidable at the option of the defrauded party, and such avoidance may be impossible after the rights of third parties have intervened. *Oakes* v. *Turquand.*

No repudiation is necessary where the contract is actually *void*, and there is no rescission against innocent third parties.

II.—Frauds arising chiefly from the Peculiar Condition of the Injured Parties.

Full and free consent is necessary to every agreement. Such consent, from the nature of the case, is impossible in contracts entered into with the following classes of persons:—

(1.) Persons of unsound mind.

These contracts are usually void, but contracts entered into with them in good faith and for their benefit, as for necessaries, will be upheld.

It appears, however, that the onus is on the defendant to prove that the plaintiff knew him to be so insane as not to know what he was about. *Imperial Loans Co.* v. *Stone.* Vide Anson p. 120

(2.) Intoxicated persons.

To obtain relief, the party must have been so far intoxicated as to be utterly deprived for the time being of the use of his understanding, otherwise both parties will be left to their remedy at law.

But relief will be given where there has been any contrivance to draw the party into drink, and so obtain an advantage.

(3.) Imbecile persons.

The burden of proof is on the other party in contracts with persons of weak understanding, to show that no unfair advantage has been taken of such weakness.

(4.) Persons who are not free agents, being either

(*a.*) Under duress or fear,

(*b.*) In extreme necessity.

(5.) Infants.

The contracts of infants, except for necessaries, are, as a general rule, not binding on them. They differ from contracts of a person *non compos mentis* in this respect—these latter are *ab initio* void, while the former used to be only voidable, but some are now wholly void. Where, however, a contract can never be for the benefit of an infant, it is utterly void.

Under the Infants' Relief Act, 1874 (37 & 38 Vict. c. 62), all contracts for loans of money or sale of goods (except necessaries) to, and all accounts stated with, infants, are absolutely void and incapable of confirmation; and all other contracts are void *against* the infants, who may, however, sue on them.

Infants are not liable even for necessaries if they are already fully supplied.

Johnstone v. *Marks*; *Barnes* v. *Toye*.

(6.) Married women.

Although formerly protected because of her disability, yet, by virtue of the Married Women's Property Acts, 1882 and 1893, a married woman is now, so far as her separate property is concerned, fully capable of entering into contracts of every kind.

Where one of two innocent persons has to suffer through fraud of another, that one must suffer who has enabled such other to commit the fraud.

CHAPTER IV.

CONSTRUCTIVE FRAUD.

CONSTRUCTIVE FRAUDS are acts, statements, or omissions which operate as virtual frauds on individuals, or, if generally permitted, would be prejudicial to the public welfare, and are not clearly resolvable into mere accident or mistake, and yet may have been unconnected with any selfish or evil design, or may amount in the opinion of the person chargeable therewith to nothing more than what is justifiable or allowable.

These cases may be divided into four classes—

I. Constructive frauds, so called because they are contrary to some general public policy or to the policy of the law.

II. Constructive frauds which arise from the abuse of some peculiar, confidential, or fiduciary relation between the parties.

III. Constructive frauds in the case of persons peculiarly liable to be imposed on.

IV. Constructive frauds which operate as virtual frauds on individuals, irrespective of any fiduciary relation or any peculiar liability to imposition.

(*Sm. Man.*, 83, 101, 108.)

I.—Frauds on Public Policy.

(1.) Marriage brokage contracts — incapable of confirmation.

(2.) Contracts to promote marriage—by means of rewards.

(3.) Secret contracts in fraud of marriage—whereby open marriage agreements are rendered inoperative.

(4.) Contracts to influence testators—for they encourage scheming.

(5.) Contracts or conditions in *general* restraint of marriage—as tending to promote immorality, &c. *Scott* v. *Tyler*.

Conditions in restraint of marriage, whether precedent or subsequent, are good if annexed to gifts in favour of a *widow* or *widower*. All limitations *until* marriage with a gift over are good, and cease on marriage.

Conditions imposing *particular* restraints on marriage are good, *e.g.*, any particular person, or a native of any particular country, or a domestic servant.

(6.) Contracts or conditions in *general* restraint of trade—as tending to discourage industry. But *particular* restraints are good where the restraint is nothing more than what is necessary for the *reasonable* protection of the party. *Mitchell* v. *Reynolds*; *Mallan* v. *May*.

(7.) Contracts in violation of public trust or confidence—as for public offices, suppression of criminal proceedings,

champerty or corrupt considerations, or in relation to a bill in Parliament.

(8.) Frauds in relation to transfer of shares in joint-stock companies. Thus a transfer subject to reservation in favour of transferor, so as to get rid of liability for calls, is fraudulent. As between trustee and *cestui que trust*, the trustee whose name is on the register is liable.

It should be noted that all these contracts against public policy are VOID, and not voidable merely. It is a general rule that where parties are concerned in an illegal agreement, no relief will be given to any of them; but where the agreement is illegal as against *public policy*, relief will be given on the ground of the public interest.

II.—Frauds in the case of Persons in Fiduciary Relations.

The general principle underlying all these cases is that where influence is acquired and abused, or confidence reposed and betrayed, equity will give relief. It is independent of any admixture of imposition, being based upon a motive of general public policy. Influence is presumed.

Huguenin v. *Basely.*

(1.) Parent or person *in loco parentis* or relative having influence, and child.

Gifts from latter to former void, unless made in perfect good faith, and reasonable under the circumstances.

Davies v. *Davies.*

To support such a gift it must be proved that—

(*a.*) The deed in question is the actual deed of the child, and intended by him to operate as it does.

(*b.*) Such intention was fairly produced.

The child should have independent and disinterested advice.

(2.) Guardian and ward.

Incapable of dealing with each other whilst relation continues, and dealings shortly after it has terminated will be viewed with suspicion.

(3.) *Quasi* guardians, medical and confidential advisers, ministers of religion.

(4.) Solicitor and client.

Gift from client to solicitor pending that relation cannot be sustained; *Thomson* v. *Judge*; *In re Luddy*. or even to the wife of the solicitor; *Liles* v. *Terry*. and can even be impeached by the legal representatives of the client after his decease. *Tyars* v. *Alsop*.

Gift from client to solicitor by *will* is good.

Hindson v. *Weatherill*.

Purchase is good if there is perfect *bona fides*, but the whole onus of proving the fairness of the transaction is thrown on the solicitor.

Purchase by solicitor from client made in name of another can under no circumstances be maintained.

MacPherson v. *Watt*.

Agreements to pay a solicitor a gross sum for past or future services, although formerly void, are now good if in writing; but every such agreement is subject to taxation. *In re Russell*; 33 & 34 *Vict*. c. 28; 44 & 45 *Vict*. c. 44.

(5.) Trustee and *cestui que trust*.

Trustee may purchase from *cestui que trust* where there is a clear and distinct and perfectly fair contract that the latter intended the former to purchase; he may also purchase from *cestui que trust* who is *sui juris*, and has discharged him.

Trustee *for sale* cannot purchase without leave of the court. *Fox* v. *Mackreth*.

Gift to trustee by *cestui que trust* only supported if it would be good between guardian and ward, *i.e.*, the relation and the influence arising from it must have ceased.

(6.) Principal and agent.

The utmost good faith and full disclosure is required in dealings between them; no secret profit may be made by the agent out of his agency. *Lees* v. *Nuttall*.

(7.) Miscellaneous fiduciary persons, such as counsel, auctioneers, and others who have been consulted as to sale. *Martinson* v. *Clowes*.

(8.) Debtor, creditor, and surety, between whom entire good faith is required.

III.—Frauds in the case of Persons Peculiarly Liable to be Imposed on.

(1.) Bargains with heirs and expectants.

Such bargains will be set aside unless purchaser, on whom onus rests, can show that the transaction is reasonable and *bonâ fide*.

Neville v. *Snelling*; *Aylesford* v. *Morris*.

If confirmed by expectant after death of ancestor, will not be relieved against. *Chesterfield* v. *Jansen*.

But there can be no ratification by acquiescence until the reversion falls in. *Fry* v. *Lane*.

The Act 31 Vict. c. 34 enacts that no purchase made *bonâ fide* without fraud of a reversionary interest shall be set aside MERELY *on the ground of undervalue*. This Act does not affect the equity jurisdiction, for undervalue is in itself evidence of fraud, and will always be a material element where it does not constitute the sole ground for relief. *Miller* v. *Cook*; *Tyler* v. *Yates*; *Aylesford* v. *Morris*.

Where relief is granted, it is upon payment of the sum actually advanced with interest.

Knowledge of the transaction by the father or other person *in loco parentis* renders it *prima facie* good.

(2.) Post-obits, &c., upon similar principles, are set aside when made by heirs and expectants.

(3.) Common sailors are treated on same footing as expectants, irrespective of the provisions in their favour contained in the Merchant Shipping Acts.

(4.) Tradesmen selling goods at extravagant prices to expectants are liable to have their claims reduced by a court of equity.

(5.) Dispositions by persons shortly after attaining majority.

IV.—Virtual Frauds on Individuals irrespective of any Fiduciary Relation to any Peculiar Liability or Imposition.

(1.) Statute of Frauds not allowed to be used as an engine of fraud.

(2.) Knowingly producing a false impression so as to mis-

lead another, or enabling another to commit a fraud, or making representations in forgetfulness of one's own title. *Slim* v. *Croucher*; *Rice* v. *Rice*.

Thus a company which has issued certificates to the effect that shares are fully paid, will be estopped from saying this is not the case.

(3.) Frauds on auctions.

Agreements between parties not to bid against each other are void. The employment of a puffer, whereby bidders are misled, avoids the auction. But by 30 & 31 Vict. c. 48, the vendor of real property may bid if he reserve the right in the particulars or conditions of sale; and sales under the direction of the court are not to be reopened in the absence of fraud. The Sale of Goods Act, 1893, has similar provisions in respect of personal property.

(4.) Frauds upon consenting creditors to a composition deed.

(5.) Frauds in case of voluntary gifts; the donee being always obliged to prove *bonâ fides*.

(6.) Frauds under 27 Eliz. c. 4, now practically abolished by the Voluntary Conveyances Act, 1893.

(7.) Fraudulent appointments.

A power of appointment must be exercised *bonâ fide* for the end designed.

Topham v. *Portland*; *Aleyn* v. *Belchier*.

A power may, however, be validly released even though the effect of the release is to benefit the donee of the power. *In re Somes*.

Appointments by father in favour of sickly children not in need are usually set aside. *Henty* v. *Wrey*.

And a void appointment may be good as to part, if that part be free from fraud and severable.

Where a contract is entered into with the appointee to dispose of the property for the benefit of some person not an object of the power, then the appointment is fraudulent and void.

Formerly the appointment of merely *nominal* shares to one or more objects of the power (although valid at law) was set aside as an *illusory* appointment.

By 1 Will. IV. c. 46, illusory appointments were in

effect made valid in equity as well as at law, and under 37 & 38 Vict. c. 37, in the absence of a contrary intention in the instrument creating the power, any object of the power may be *altogether excluded.*

(8.) A man cannot derogate from his own representations which formed the inducement to contract.

Piggott v. *Stratton; Hudson* v. *Cripps.*

CHAPTER V.

SURETYSHIP.

CONTRACTS of suretyship require the utmost good faith between all parties.

It has been laid down that the concealment by creditors from a surety of facts which go to increase his risk releases the surety; but this requires qualification thus. The fact concealed must either—

(1.) Be one which the creditor is under an obligation to discover; *Hamilton* v. *Watson.*

Or

(2.) Form an integral part of the immediate transaction. *Pidcock* v. *Bishop.*

Creditors, although not bound, as a general rule, to inquire into the circumstances of the suretyship, yet must do so if there is reasonable ground to suspect fraud. *Owen* v. *Homan.*

The rights of a creditor against the surety are wholly regulated by the *instrument of suretyship;* *In re Sass; ex parte N. P. Bank.* and apparently a surety cannot compel the *creditor* to proceed against the debtor.

Remedies of Surety.

(1.) Surety cannot force *creditor* to take action against debtor, but may himself institute proceedings in the nature of *quia timet* against *debtor* to compel him to

pay creditor, as soon as the latter has a present right to sue and refuses to do so. *Padwick* v. *Stanley.*

(2.) Action for judicial declaration of discharge.

(3.) Action for reimbursement after payment.

This right has been based upon an implied contract. The contract being one of indemnity, the surety can only recover from the debtor what he has actually paid.

(4.) Action for delivering up of securities by creditor to surety on payment.

The surety has always been entitled to all securities held by the *creditor*, except such as were actually extinguished by the payment, and now by the Mercantile Law Amendment Act (19 & 20 Vict. c. 97, s. 5), a surety is entitled to *every* security held by creditor, whether deemed at law to be satisfied or not.

Further advances made by the creditor to the debtor will be subject to this right of the surety, for the creditor knows of the surety's interest in the securities. *Forbes* v. *Jackson.*

(5.) Action for contribution against co-sureties.

One of several sureties paying the debt has a right to reimbursement or contribution from his co-sureties; for "*Qui sentit commodum sentire debet et onus.*"

This right of contribution does *not* spring from *contract*, but is founded on general principles of equity and justice. *Dering* v. *Winchelsea.*

The right exists whether the sureties are bound jointly or severally, in the same or in different instruments, and though ignorant of their mutual relation, provided they are bound for the same debtor and in the same transaction.

No contribution can be required beyond the amount for which a surety has agreed to be bound; for the right, although not founded on, may be qualified by contract, and any surety can limit his liability by express contract. *Swain* v. *Wall.*

The right of a surety to contribution from a co-surety arises—

(1.) When the surety is liable to pay or has paid either the whole or more than a just proportion of the debt;

(2.) When the surety has not paid, but has had judgment against him for the full amount of the debt;

(3.) Where the claim of the creditor against the deceased surety has been allowed.

Re Snowdon; Re Wolmershausen (ii. L. C. 544).

When a surety becomes bankrupt, his co-surety is entitled to *prove* for the *whole* debt, and not merely the proportion the bankrupt ought to have paid, but he cannot actually recover more than such proportion.

Morgan v. *Hill.*

Co-sureties are entitled to the benefit of all securities obtained by one of their number, whether they knew of such securities or not. *Steel* v. *Dixon.*

A surety can only charge the debtor what he has actually paid to discharge his obligation.

Reed v. *Norris.*

Co-directors and co-trustees also (in the absence of fraud), are, as a general rule, entitled to this right to contribution. *Ramskill* v. *Edwards; Fletcher* v. *Green.*

But if one of them is a *cestui que trust*, and has authorised the breach, he cannot claim contribution.

Chillingworth v. *Chambers.*

But one trustee has no right of indemnity or recoupment against his co-trustee except where there are special circumstances. *Bahin* v. *Hughes.*

As, for example, where the co-trustee is the solicitor to the trust, and derived a personal benefit from the breach.

Under the R.S.C. Order xvi., provision is made for a surety who is sued to obtain indemnity and contribution from principal or co-sureties in the same action by means of a third party notice.

Differences between Law and Equity as regards Suretyship abolished by the Judicature Acts.

(1.) In case of insolvency or death of a co-surety, the solvent or surviving sureties could be compelled to contribute for the deficiency at equity, but not at law.

(2.) Parol evidence was admissible to show that an apparent principal was a surety only at equity, but not at law.

Circumstances Releasing Sureties.

(1.) If creditor varies contract with debtor to the prejudice of the surety without his privity.

(2.) If creditor gives time in a binding manner to debtor so as to prejudicially affect the remedies of the surety without his consent. *Rees* v. *Berrington.*

The surety will not be discharged, however, where the creditor, on giving time, *reserves* his rights against the surety; for the surety cannot be prejudiced by such an arrangement.

The agreement to give time must be made with the *debtor*, in order that the surety may be released.

(3.) If creditor actually *releases* the principal debtor or a co-surety.

But the surety is not discharged—

(*a.*) If the release can be construed as a *covenant not to sue.*

(*b.*) If in the case of a mere *purported* release, or a covenant not to sue, the creditor reserves his rights against the surety.

Where, however, there is a novation of the debt, the surety is discharged even if rights against him are reserved.

(4.) If creditor loses securities, or allows them to go back into debtor's hands, or fails in making them perfect, the surety is *pro tanto* discharged.

(5.) If a surety executes an instrument in the belief that certain other parties named therein as sureties will also do so, and all such parties do not execute, he is discharged from the suretyship.

Hansard v. *Lethbridge.*

Where the liability of the surety does not arise until after default by the debtor, he is discharged by the death of the debtor before default.

When a surety is discharged, the securities given by him are discharged also.

The doctrines of marshalling and consolidation apply as against sureties.

In ascertaining the liability of sureties in mortgage deeds, it

is necessary to distinguish sureties who are mere covenanting parties from those who are co-mortgagors.

Williams v. *Owen*; *Bowker* v. *Bull.*

Where a mortgagor and his surety covenant to pay mortgage money on demand, the Statute of Limitations runs from time of demand made, and not from the date of the deed.

Brown v. *Morgan.*

CHAPTER VI.

PARTNERSHIP.

In matters of partnership, equity exercises a practically exclusive, although nominally concurrent, jurisdiction the relation between partners being a quasi-fiduciary one; and by the Judicature Act, 1873, s. 34, the dissolution of partnership and the taking of partnership and other accounts is assigned to the Chancery Division exclusively.

At common law, as a general rule, no action lay by one partner against another in respect of partnership accounts, except—

(1.) Where an account had been stated between them, and a *final* balance struck.

(2.) Where money had been received by one partner for the separate use of the others, and wrongfully carried to the partnership account.

(3.) Where one partner had improperly used the partnership name in making a promissory note for his private debt, and it had been paid by the others.

(4.) Where the cause of action accrued before the commencement of the partnership. (*Chit. Cont.*, 336.)

The Partnership Act, 1890 (53 & 54 Vict. c. 39), has practically codified the law of partnership, but does not (except where expressly so provided thereby) affect the rules or jurisdiction of equity. The Act defines partnership as "the relation which subsists between persons carrying on a business in common with a view of profit."

An agreement to enter into partnership will not be enforced unless—

(1.) A definite term has been fixed.

And

(2.) There have been acts of part performance.

During the continuance of the partnership, injunctions against the breach of partnership articles will be granted in cases of—

(1.) Omission of name of a partner when resulting from studied delay.

(2.) Carrying on another business.

(3.) Destruction of partnership property.

(4.) Exclusion of partner.

Neither specific performance nor any injunction will be decreed

(1.) Where remedy at law is perfectly adequate.

(2.) Where there is an agreement to refer to arbitration; in which case a stay of proceedings is generally ordered: but after the award either party may for sufficient reason apply to have it set aside.

A Partnership may be Dissolved by

(1.) Operation of law, in cases of

- (*a.*) Death
- (*b.*) Bankruptcy
- (*c.*) Conviction for felony
- (*d.*) General assignment

} of a partner.

(2.) Mutual consent.

(3.) Any partner at any time, if a partnership at will, unless irreparable mischief would ensue.

(4.) Effluxion of time.

(5.) Judgment of Chancery Division in cases of—

- (*a.*) Partnership induced by fraud.
- (*b.*) Gross misconduct and breach of trust in relation to partnership.
- (*c.*) Continual breaches of contract, resulting in *substantial* failure by defendant to perform agreement.
- (*d.*) Wilful and permanent neglect of business.
- (*e.*) Disagreements or incompatibility of temper preventing the carrying on of business.

(*f.*) Permanent insanity of an active partner.

(*g.*) Generally, under the Partnership Act, 1890, whenever it is "just and equitable" so to do.

The share of a partner is a right to money after the partnership has been wound up. A limited account will sometimes be decreed where no dissolution is intended, but a manager or receiver will never be appointed except with a view to dissolution, or to a sale where there has been dissolution by notice.

The relation between surviving partners and representatives of deceased partners is not a fiduciary one, and the right of the latter to an account may be barred by the Statute of Limitations, except in cases of fraud. *Knox* v. *Gye.*

The representatives of the deceased partner have no lien on any specific part of the partnership assets.

Land forming an asset of the partnership, or "substantially involved in the business," whether purchased or devised, is money; as such it goes to the personal representative, and was liable to probate duty, now estate duty. *Waterer* v. *Waterer.*

The good-will of a business is, in general, a partnership asset. *Labouchere* v. *Dawson.*

And when, upon the determination of the partnership, the good-will goes to one of the partners, the other partner, although entitled to carry on a rival business, may not solicit the old customers of the firm. *Trego* v. *Hunt.*

And further, in the absence of agreement to the contrary in the partnership articles, each partner may use the partnership name after dissolution. *Chappel* v. *Griffith.*

On the death of a partner, creditors of the partnership may sue the surviving partner, or, at their option, institute proceedings for payment of their debts out of the assets of the deceased partner. Notwithstanding this, joint creditors are not ranked equally with separate creditors, but can only claim the surplus remaining after satisfaction of the separate debts. On the other hand, the separate creditors are not entitled to be paid anything out of the joint estate until all the joint creditors have been satisfied. *Ex parte Ruffin and Rowlandson.*

The liability of partners in equity has been stated to be joint and several, that is to say, where there is in equity no survivorship of property there is no survivorship of liability. *Beresford* v. *Browning.*

A partnership, although dissolved by death, is, in equity, taken to be still subsisting for every purpose of liquidation, so that what was before joint becomes several by the dissolution and by the exclusion in equity of the survivorship which takes effect in law. *Kendall* v. *Hamilton.*

And the Partnership Act, 1890, provides that every partner is liable jointly with the other partners for all debts of his firm, and after his death his estate is also severally liable in a due course of administration for the same, subject to the prior payment of his separate debts.

Partnership firms having a common partner, although formerly not able to sue one another at law, could always do so at equity.

As a general rule, no partner can prove in competition with the creditors of the firm except

(1.) Where two firms having a common partner, or a firm and one of its partners, carry on distinct trades and have business dealings together.

(2.) Where separate property of a partner has been fraudulently converted to the use of the firm or *vice versâ.*

CHAPTER VII.

ACCOUNT.

ACTIONS OF ACCOUNT, although always recognised at law, were dilatory and inconvenient, and practically confined to cases

(1.) Where privity between the parties, of deed or of law.

(2.) Between merchants.

Equity jurisdiction was preferred mainly for two reasons—

(1.) Discovery could not formerly be obtained at law.

(2.) Courts of law possessed no proper machinery for taking accounts, and, as a consequence, frequently referred actions of account to arbitration. Equity courts, on the other hand, provided ready means for this purpose.

The cases in which an account might be had at equity, and in which the Chancery Division is still the more appropriate tribunal, may be classified thus—

(1.) Principal against agent.

On the ground of the fiduciary relation between the parties. *Mackenzie* v. *Johnson.*

But not agent against principal, in which case there is no such relation. *Padwick* v. *Stanley.*

Agent can set up Statute of Limitations unless relation between them amounts to trustee and *cestui que trust.* *In re Hindmarsh.*

Accounts will also be decreed in favour of—

(*a.*) Patentee against infringer.

(*b.*) *Cestui que trust* against trustee.

(2.) Where there are mutual accounts between plaintiff and defendant.

Mutual accounts are "where each of two parties has received and also paid on the other's account."

Phillips v. *Phillips.*

There is no action of account if it is a mere question of set-off.

(3.) Where there are circumstances of special complication.

The test as to what amount of complication would give equity jurisdiction has been stated to be—Can accounts be examined on a trial at *Nisi prius*?

O'Connor v. *Spaight.*

But this test has not been universally followed, and the difficulty of examining accounts at *Nisi prius* will only amount to a strong circumstance in favour of equity jurisdiction.

Under the Judicature Acts, as modified by the Arbitration Act, 1889, matters of account may be referred to official or other referees.

Chief Defences to Actions of Account.

(1.) Stated or settled account.

An open account is one of which the balance is not struck, or which is not accepted, by both parties.

A stated account is one that is accepted, either expressly or impliedly, by both parties.

A settled account is one which has not only been accepted by both parties but discharged.

In reply to this defence the plaintiff—

(*a.*) As a general rule, has only liberty to surcharge and falsify, the *onus probandi* being on him.

(*b.*) Where fraud or mistake is proved, may have the whole account opened and taken *de novo.*

(2.) Laches and acquiescence.

Except where the parties occupy a fiduciary relation, and *mala fides* is alleged. Formerly, the Statute of Limitations did not apply where a fiduciary relation existed between the parties, but the Trustee Act, 1888, provides that except in cases of fraud the statute shall in future apply just as if the parties were not in a fiduciary relation.

Note that the relation between

(*a.*) Broker and client is a fiduciary one.

Ex parte Cook, in re Strachan.

(*b.*) Banker and customer is not a fiduciary one, but merely that of debtor and creditor. *Foley* v. *Hill.*

In the absence of *fraud*, accounts, however irregularly taken, are, as a general rule, to be treated as "settled accounts, if they appear to have been so intended by the parties.

Ex parte Barber; Holgate v. *Shutt.*

CHAPTER VIII.

SET-OFF AND APPROPRIATION OF PAYMENTS AND OF SECURITIES.

SET-OFF.

SET-OFF has been defined as a defence which the defendant in an action sets up against the plaintiff's claim, counterbalancing such claim in whole or in part. *Stooke* v. *Taylor.*

No set-off was originally allowed at common law in cases of *mutual unconnected debts.* This was remedied by the Statutes of Set-off (4 Anne, c. 17; 2 Geo. II. c. 22; 8 Geo. II. c. 24), which provided that the right of set-off should exist first of all in the case of bankrupts only, but finally in all cases of *mutual debts.* In the case of *mutual connected debts* the balance only was recoverable, both at law and in equity, thus allowing the right of set-off.

Equity allowed the right of set-off

(1.) In all cases of mutual independent debts where there was *mutual credit* or the debts had a common origin, and this apart from the Statutes of Set-off, upon the ground either of presumed intention of the parties or natural equity.

(2.) In the case of mutual equitable debts, or a legal debt on one side and an equitable debt on the other, where there was a mutual credit as to such debts.

(3.) In the case of cross demands, where some equitable ground existed for claiming relief.

Now, in all these cases, under the Judicature Acts and rules, there would be a set-off both at law and in equity.

No set-off was or is allowed

(1.) In cases where there is an intervening equity, *e.g.*, in the winding up of a company, a debt cannot be set-off against calls unless both the company and the shareholder are insolvent. *Grissel's Case.*

(2.) In cases of debts accruing in different rights, *e.g.*, joint against separate debts, unless under special circumstances, as fraud. *Ex parte Stephens.*

Set-off is allowed under the Bankruptcy Act, 1883, s. 38, in cases where there have been mutual credits, debts, or other mutual dealings.

Where money is paid for a specific purpose, it cannot be applied to any other purpose.

Note that even under the Statutes of Set-off mutual *debts* only could be set-off; but now under the Judicature Acts a defendant may set-off or set up a counter-claim, whether such set-off or counter-claim *sound in damages* or not.

A counter-claim is to be distinguished from a set-off, being the assertion of a separate independent demand, not answering or destroying the claim of the plaintiff. *Stooke* v. *Taylor.*

Appropriation (*or, as termed in Roman Law, Imputation*) of Payments.

Where a debtor, owing several debts to the same creditor, makes a payment to him, the question arises, In respect of

which debt was it paid? As to this the following rules have been established by

Clayton's Case.

(1.) The *debtor* has the right, in the first instance, to appropriate the payment to which debt he chooses, provided he does so at the time of making the payment.

(2.) The *creditor*, on the debtor failing, has the next right of appropriation, which he may exercise at any time before action brought.

The creditor may even appropriate the payment towards satisfaction of a statute-barred (but not an illegal) debt.

Such appropriation will not, however, *revive* a debt already barred; *Mills* v. *Fowkes.*
but a general payment will take a debt not already barred out of the statute.

(3.) On both debtor and creditor failing to exercise this right, the law will appropriate the payment to the debt earliest in point of date, commencing with the liquidation of any interest which may be due. The account is not to be taken backwards and the balance struck at the head instead of the foot of it. *Clayton's Case.*

This rule is only a presumption of law, and may therefore be excluded: thus it does not apply between a guaranteed account and one not so secured, or between trustee and *cestui que trust.*

In re Sherry; In re Hallett's Estate.

Appropriation of Securities.

Where securities are appropriated to specific debts, they go in discharge of such debts, whether there be only one or successive debts.

In the case of the bankruptcy of *both* debtor and creditor, this rule is known as the rule in *Waring's Case.* In such a double bankruptcy the securities remaining in specie are to be applied according to their appropriation; and the rule applies even to third party holders. It has no application, however, if neither party be bankrupt.

The rule in *Waring's Case* is only applicable where there is a double bankruptcy; and the appropriation must in all cases be proved. *Phelp, Stokes & Co.* v. *Comber.*

CHAPTER IX.

SPECIFIC PERFORMANCE.

WHILE at law the only remedy for breach of contract was an action for damages, the contract might be compelled to be carried out in equity; the inadequacy of the legal remedy constituting the ground for the interposition of equity. It is, therefore, a general principle in these cases that equity will not interfere where damages would amount to a complete compensation.

Equity will not, however, interfere to compel specific performance in the following cases:—

(1.) Illegal or immoral agreements.

(2.) Voluntary agreements. *Jefferys* v. *Jefferys.*

(3.) Agreements which are incapable of being actually enforced by the court, such as agreements—

(*a.*) Where personal skill or knowledge is involved, *e.g.*, a contract to write a book or sing at a theatre. *Lumley* v. *Wagner.*

(*b.*) For sale of the good-will of a business *without* the premises.

(*c.*) To build or repair, as being too uncertain.

(*d*) Revocable in their nature.

(4.) Agreements wanting in mutuality.

The remedy *must* be *mutual*, or action for specific performance will not be entertained; *Adderley* v. *Dixon.* so an infant cannot sue for specific performance, although he may have his remedy for damages.

The Statute of Frauds, s. 4, creates no exception to this rule, for the plaintiff, although he has not signed the agreement, makes the remedy mutual by suing.

(5.) Agreements for loan of money.

(6.) An agreement by donee of a power to make a particular appointment. *Hill* v. *Schwartz.*

When a contract comprises several matters, some of which —standing alone—would be susceptible of being specifically enforced, specific performance may be obtained of such part of the contract, if clearly severable and a piecemeal performance of the agreement is consistent with the intention of the parties.

There must, of course, be a complete agreement; and with regard to agreements by correspondence, it may be noted that an offer to sell may be withdrawn before acceptance without formal notice; and the post-office is the common agent of both parties, so that as soon as a letter of acceptance is delivered to the post-office the agreement is complete.

The subject may be divided into two heads:—

I.—Agreements respecting Personal Chattels.

As a general rule, agreements of this character will not be enforced, for damages at law would afford an adequate compensation; where, however, this would not be the case, specific *performance* may be decreed: *Cuddee* v. *Rutter.*

As in the case of agreements—

(1.) For sale of *shares* in a private undertaking.
Duncuft v. *Albrecht.*

(2.) For purchase of assigned debts under a bankruptcy.
Adderley v. *Dixon.*

And specific *delivery* instead of damages will be decreed—

(1.) In cases of articles of unusual beauty or rarity, when damages would not compensate.
Dowling v. *Betjemann.*

(2.) In cases of heirlooms and chattels of peculiar value.
Somerset v. *Cookson*; *Pusey* v. *Pusey.*

(3.) Where a fiduciary relation exists between the parties.
Wood v. *Rowcliffe.*

By the Common Law Procedure Act, 1854, courts of law were empowered to order specific delivery of chattels in actions of detinue; and now, under the Judicature Acts, the powers of courts of law and equity are co-extensive.

And under the provisions of the Sale of Goods Act, 1893, the court may, if it think fit, in any case of breach of contract to deliver specific goods, decree specific performance instead of damages.

II.—Agreements respecting Lands.

These agreements are generally enforced specifically, for land may have a peculiar value in the eyes of the purchaser, so that damages will not be a sufficient remedy, since they would not, as in the case of personal chattels, enable him to go and buy other property of exactly the same description and value to him. This jurisdiction of equity extends to lands out of the jurisdiction, if the parties are within it. *Penn* v. *Lord Baltimore.*

The term "specific performance" is used in a double sense, namely, in the sense of

(1.) Turning an executory agreement into an executed one by ordering execution of document stipulated for.

(2.) Carrying out *in specie* the subject-matter of the agreement.

The 4th section of the Statute of Frauds does not avoid the agreement, but only prevents its being proved; and notwithstanding the provisions of the statute, Equity will decree specific performance of a *parol* agreement in the four following cases, on the ground that it would be inequitable to allow the statute to be set up as a bar to relief:—

1. Where the sale is by the court.
2. Where it is fully set forth by the plaintiff in his statement of claim, and admitted by the defendant in his defence, and the defendant does not set up the statute as a bar.

   In such a case the defendant may be deemed to have waived his right, the rule being *Quisque renuntiare potest jure pro se introducto.*
3. Where it was intended to be reduced into writing, but this has been prevented by the fraud of the defendant.
4. Where it has been partly performed by the plaintiff.

   Hussey v. *Horne Payne; Lester* v. *Foxcroft.*

   In order that an agreement may be taken out of the statute by acts of part performance, there must be a

valuable consideration on the part of the person seeking to enforce it. *In re Hudson.*

As to what acts will be deemed a

PART PERFORMANCE.

(1.) Acts introductory or ancillary only to the agreement do *not* amount to part performance, *e.g.*, delivering abstract of title.

(2.) Acts, to be deemed part performance, must be *exclusively* and unequivocally referable to the agreement, *e.g.*, where possession is delivered and obtained *solely* under the agreement. *Alderson* v. *Maddison.*

(3.) Acts of part performance, in order to take a parol agreement out of the statute, must be of such a nature that specific performance could be decreed if it were in writing; and must be such that it would amount to fraud in the defendant to take advantage of the contract not being in writing: acts of part performance will not of themselves supply the want of jurisdiction.

(4.) Acts, to be deemed part performance, must not be capable of being undone. Thus

Payment of purchase-money, in whole or in part, is no act of part performance, for on repayment the parties will be in the same position as before.

Compare as to part payment, sec. 4 of the Statute of Frauds, and sec. 4 of the Sale of Goods Act, 1893.

(5.) Marriage is not *per se* deemed a part performance, but acts in furtherance of the agreement independently of the marriage are.

Surcombe v. *Pinniger; Caton* v. *Caton.*

And a return to cohabitation may be a sufficient act of part performance.

A post-nuptial *written* agreement in pursuance of a pre-nuptial *parol* agreement will be enforced.

In marriage as well as other agreements, parol representations intended to influence the conduct of the other party, and on the faith of which he acts, will be enforced, but not representations of a mere

intention. It must be a representation of some state of facts alleged to be at the time actually in existence, *i.e.*, representation of existing facts.

(6.) The parol evidence must prove the agreement.

Grounds of Defence

to an action for specific performance apart from the Statute of Frauds.

(I.) Misrepresentation by plaintiff in relation to the agreement; and a misrepresentation by an agent would be deemed the misrepresentation of the principal.

(II.) Mistake rendering specific performance a hardship.

Parol evidence of mistake is admissible in equity; for the Statute of Frauds merely provides that an *unwritten* agreement shall *not* bind.

(III.) Error of defendant, even if arising from his own negligence; for defendant may be answerable for *damages* at law without being liable to specific performance.

Malins v. *Freeman.*

With regard to mistake or parol variation, evidence of it was wholly inadmissible at law, and, as a general rule, is only allowed to be offered in equity by a defendant resisting specific performance, and not by a plaintiff seeking to compel such performance.

Parol evidence may be gone into by the *plaintiff*—

(1.) Where the parol variation is in favour of the defendant, and the plaintiff offers to perform the agreement with the variation.

(2.) Where the defendant sets up a parol variation, and the plaintiff seeks specific performance of the agreement with the variation.

Woollam v. *Hearn; Townshend* v. *Stangroom.*

(3.) Where there have been such acts of part performance of the parol portion as would justify a decree for specific performance in the case of an original agreement.

(4.) Where an omission has occurred by fraud.

(*Sm. Man.*, 316.)

As to the effect of a mistake or parol variation when set up as a *defence*—

(1.) Where the error arose, not in the original agreement, but in its reduction into writing, specific performance decreed with the parol variation.

No relief will be granted where the error arose from a misunderstanding in the original agreement.

(2.) Evidence of a parol agreement subsequent to a written agreement is inadmissible unless there have been such acts of part performance as would enable it to be enforced if an original agreement.

(IV.) Misdescription. This defence may be classified under two heads—

Cases where the misdescription

(1.) Is of a substantial character, so as not fairly to admit of compensation—a purchaser ought to have what he bargained for.

(2.) Is of such a character as fairly to admit of compensation. *Seton* v. *Slade.*

A. In cases where VENDOR *seeks Specific Performance.*

(1.) Purchaser is not compelled to take—

(*a.*) Freehold instead of copyhold.

(*b.*) Under-lease instead of original lease.

(*c.*) Compensation where there has been fraud.

(2.) Purchaser will be compelled to take, with compensation, where the difference is slight, as a mere deficiency in acreage.

Where there is a provision for compensation in the agreement, a claim for compensation for misdescription will be allowed even after conveyance; unless expressly barred by the agreement.

Palmer v. *Johnson; Clayson* v. *Leech.*

B. In cases where PURCHASER *seeks Specific Performance.*

(1.) Purchaser can compel specific performance, taking an abatement. The vendor must sell what interest he has. *Hill* v. *Buckley.*

(2.) Where partial performance would be unreasonable or prejudicial to third parties it will not be enforced.

Where the terms of the agreement exclude compensation in case of a deficiency of acreage, and there is a considerable deficiency, the rule is that the purchaser cannot enforce specific performance with compensation, nor can the vendor without compensation. The vendor may, however, annul the agreement under the usual condition.

(V.) Lapse of time.

At law, time used to be always of the essence of the contract, but in equity time is deemed to be *prima facie* non-essential. *Seton* v. *Slade.*

Time is, however, deemed to be of the essence of the contract, and its lapse will therefore be a bar to relief even in equity in the following cases—

(1.) Where originally of the essence of the contract by
  (*a.*) Express agreement.
  (*b.*) The nature of the case.
(2.) Where made of the essence of the contract by subsequent *reasonable* notice.
(3.) Where its lapse is such as to constitute laches or abandonment.

And now "stipulations in contracts as to time or otherwise, which would not before the passing of this Act have been deemed to be, or to have become, of the essence of such contracts in a court of equity, shall receive in all courts the same construction and effect as they would have heretofore received in equity."

Jud. Act, 1873, s. 25, § 7.

(VI.) The agreement is tainted with fraud; and the person defrauded or prejudiced may rescind the contract.

Formerly in the case of sales by trustees under depreciatory conditions, specific performance would not be enforced; but now the purchaser is expressly deprived of the right of making any requisition on the ground of the conditions being depreciatory by the Trustee Act, 1893.

(VII.) Where the agreement would work great hardship, or involve an unlawful act or breach of trust.

(VIII.) The agreement is not established; that is, if it be not a complete agreement as such.

(IX.) The vendor cannot deduce a title.

But the purchaser can only require such a title as is stipulated for in the agreement. In the absence of stipulation, he will not be compelled to accept a "good holding title," nor to take land subject to restrictive covenants.

The taking of possession by the purchaser is generally, and under a sale by the court always, deemed an acceptance of the title.

Repudiation and Rescission.

The purchaser may repudiate the agreement on any one of the grounds above mentioned as constituting a good defence to an action for specific performance.

The vendor may rescind the agreement when he has specially reserved to himself a right so to do.

Under the 9th section of the Vendor and Purchaser Act, 1874, a summons may be issued for the decision of any question arising out of an agreement for the sale of land, thus affording a ready method of determining any such specific question. Under this Act—where the contract as regards its initial validity is not disputed—the parties may have many questions decided which could otherwise only be decided in an action for specific performance. But damages properly so called cannot be awarded under such a summons.

Under the Common Law Procedure Act, 1854, courts of law had power to compel the specific performance of contracts by means of a mandamus. This power, however, was restricted to contracts relating to some *public duty*. *Benson* v. *Paull.*

CHAPTER X.

INJUNCTIONS.

AN INJUNCTION is a judicial order (formerly a *writ*), the general purpose of which is to restrain the commission or continuance of some wrongful act of the party enjoined.

The jurisdiction of equity arose from the fact that at law there was either no remedy at all, or else only an imperfect and inadequate remedy. The object of an injunction is usually preventative rather than restorative.

Injunctions have been generally divided into two classes—

I. Common injunctions, to prevent the inequitable institution or continuance of judicial proceedings.

Under the Judicature Act, 1873, s. 24, § 5, the power of equity courts to restrain proceedings actually *pending* in other courts is practically abolished, and the court before which the action is pending may itself direct a stay of proceedings in a proper case; and since the Bankruptcy Act, 1883, the Court of Bankruptcy, having become an integral part of the High Court, has lost its power of restraining proceedings in other courts by injunction. Now, therefore, instead of injunctions of this class, there is an order to stay proceedings.

II. Special injunctions, to restrain wrongful acts unconnected with judicial proceedings.

Under the Judicature Act, 1873, s. 25, § 8, an injunction may be granted by an interlocutory order of the court in all cases in which it appears to the court just or convenient, either conditionally or unconditionally. But this provision does not give the court any new power to issue an injunction where no court had such jurisdiction prior to the Judicature Acts.

I.—ORDER TO STAY PROCEEDINGS, *or other like Remedial Orders.*

Equity, in issuing the old injunction to restrain proceedings at law, did not interfere with the jurisdiction

of common law courts, but merely acted *in personam*, operating on the conscience of the party enjoined.

Earl of Oxford's Case.

Upon the same principle, when the parties were within its jurisdiction, equity restrained them from proceeding in a foreign court; and any division of the High Court may now do the like.

The old injunction was granted in cases where the remedy at law would be complete if proofs could be had, and in cases of purely equitable rights. In similar cases now, an order to stay will be granted.

Formerly proceedings at law *were restrained* by equity, and now a stay of proceedings will be directed by the court before whom the action is pending in cases—

(1.) Where an instrument has been obtained by fraud or undue influence.

(2.) Where assets have been lost by an executor or administrator without his default: or in lieu of a stay of proceedings, the court may order a transfer of the action into the Chancery Division.

(3.) Where a person has only a bare legal title, as against one possessing an equitable title.

Newlands v. *Paynter.*

(4.) Where a creditor has obtained judgment in an action for administration, or a transfer of the action into the Chancery Division may be directed.

(5.) Where more than one action is brought for the same purpose, and even in the formerly excepted case of a mortgagee the whole relief sought must now be claimed in one action.

(6.) Equity will protect its officers who execute its own processes.

Equity would *not* grant injunctions to stay proceedings at law—

(1.) In matters criminal, or not *purely civil*, unless the parties seeking relief were also plaintiffs in equity.

(2.) Where defence was equally available at law, in the absence of special equitable grounds for relief.

(3.) Where the matter has been duly adjudicated upon at law. *Bateman* v. *Willoe.*

The Common Law Procedure Act, 1854, provided that equitable defences should be allowed at law, but this was confined to cases in which equity would grant an unconditional and perpetual injunction. *Jeffs* v. *Day.*

This provision was optional; but now, under the Judicature Acts, the defendant at law *must* plead every kind of defence of which he intends to avail himself.

Where there is a subsisting agreement to refer to arbitration, an order staying proceedings may be made.

II.—Special Injunctions to Restrain Wrongful Acts *unconnected with Judicial Proceedings.*

Consider these under two heads—

Firstly, Injunctions to enforce a contract (express or implied), or to forbid a breach thereof.

Secondly, Injunctions to prevent a tort.

Firstly, Injunctions in cases of contract.

(1.) This jurisdiction is supplemental to that of enforcing specific performance; for, as a general rule, what equity will compel to be done it will restrain from being left undone; and even where it cannot enforce performance, it will frequently restrain acts contrary to the tenor of the agreement. *Catt* v. *Tourle.*

Equity will only grant an injunction to indirectly compel specific performance where damages would be an absolutely inadequate remedy. A purchaser who, before completion, has notice of restrictive covenants, will be compelled to observe them.

(2.) Negative contracts are specifically enforced by means of injunctions.

(3.) The breach of part of an agreement may be restrained, although specific performance of the remainder cannot be enforced; *Lumley* v. *Wagner.*
but not, as a general rule, where the court cannot secure performance by the plaintiff on his part.

(4.) Breaches of *implied* contracts resulting from the misrepresentations or acts of the parties are restrained, unless there has been acquiescence.
Piggott v. *Stratton; Neesom* v. *Clarkson.*

(5.) Breaches of statutory contracts will be restrained without proof of actual damage.

Secondly, Injunctions against torts, *i.e.*, wrongs independent of contract. Wherever there is a right, there is a remedy for its violation. To afford sufficient grounds for an injunction, there must be something more than a mere inconvenience—there must be a legal injury.

The more important cases are—

(I.) Waste.

Waste is a material alteration of things forming an integral part of the inheritance. Waste, as distinguished from trespass, could only be committed by a limited owner, between whom and the party aggrieved there was a privity of estate.

The remedy at law was the old writ of waste under the statutes of Marlbridge, Gloucester, and Westminster. In many cases the law provided no effective remedy, and the jurisdiction of equity arose from the incompetency of the law. Thus equity would restrain—

(1.) In cases not within the statutes; *e.g.*, where the party had not the *inheritance.* *Garth* v. *Cotton.*

(2.) Tenants without impeachment of waste from committing *equitable waste,* such as pulling down the family mansion-house or felling ornamental timber. *Lewis Bowle's Case.*

Tenants in tail after possibility of issue extinct, and tenants in fee with executory devise over, are on same footing as tenants expressly stated to be without impeachment of waste.

(3.) Where the title of the aggrieved party is purely equitable.

(4.) Where waste is only apprehended.

(5.) In cases of mortgages, if the mortgagor should fell timber and thereby render the security insufficient.

Permissive waste (viz., waste by reason of omission or not doing) by a legal tenant for life was *not* remediable in equity, on the ground that the party aggrieved could obtain damages at law, and Equity will no longer interfere to stay *ameliorative* waste, or to prevent or remedy *permissive* waste.

But a remainderman has no remedy against a tenant for life

in respect of permissive waste, unless the tenant for life is subject to an obligation to repair. *Avis* v. *Newman.*

Under the Judicature Act, 1873, the distinction between legal and equitable waste is practically abolished; for by section 25 it is provided that an estate for life without impeachment of waste shall not give the tenant for life any *legal* right to commit *equitable* waste in the absence of intention to confer such right in the instrument creating the estate.

Ecclesiastical waste. A rector or vicar is in the same position as an ordinary tenant for life, and has no right to fell timber except for necessary repairs to the parsonage and premises.

(II.) Nuisances.

Public nuisance—remedy, indictment at law, or injunction on information at the suit of the Attorney-General in equity. Where a public nuisance causes special damage to a private person beyond that suffered by the rest of the public, he may himself have his remedy by action. *Soltau* v. *De Held.*

Where the nuisance is directly authorised by statute, there is no remedy either at equity or law.

Private nuisance—remedy, action at law for damages or injunction in equity; also by abatement or removal of the nuisance by the party injured.

As a general rule, equity does not interfere by injunction where damages would be an adequate compensation; *e.g.*, a mere trespass, where temporary and without claim of right.

Equity will, however, interfere wherever the injury is not susceptible of being adequately compensated by damages or is irreparable. Thus equity will grant an injunction to prevent or remedy such nuisances as—

(*a.*) Darkening ancient lights.

(*b.*) Disturbance of rights to lateral support independently of prescription. *Humphries* v. *Brogden.*

(*c.*) Pollution of streams injuring riparian owners. *Att.-Gen.* v. *Birmingham.*

(*d.*) Smoke or noxious fumes injuring property. *Tipping* v. *St. Helen's Smelting Co.*

Where the property from which the nuisance proceeds is in lease, the reversioner may be liable equally with the occupying tenant.

(III.) Libels, slanders, &c.

Equity will restrain by injunction the utterance or repetition of libels, slanders, injurious trade circulars, &c.

Thorley's Cattle Food v. *Massam*; *Thomas* v. *Williams.*

Under the 58 & 59 Vict. c. 40 the repetition of libellous statements at elections may be restrained.

Under the Patent Designs and Trade-Marks Act, 1883 (46 & 47 Vict. c. 57), an injunction may be obtained against the continued issue of a circular threatening proceedings as for infringement of a patent unless action be commenced forthwith.

(IV.) Patents, copyrights, and trade-marks.

Equity exercises jurisdiction and grants injunctions in these cases wherever there is a *primâ facie* title founded upon long enjoyment, to prevent irreparable mischief and to suppress multiplicity of suits. It is clear that damages would be no adequate compensation for infringement, and that actions at law would give no sufficient remedy.

1. Patents.

A patent has been defined as a grant from the Crown by letters patent of the exclusive privilege of making, using, exercising, and vending some new invention.

The law of patents is now regulated by the Patent Designs and Trade-Marks Acts, 1883–88, and unless a patent has been registered thereunder no injunction can be obtained in respect thereof; but the Act does not interfere with the jurisdiction in equity.

No injunction will be granted until the validity of the patent has been established, and the court will either decide this question for itself or procure it to be determined by a jury.

Upon a motion for an interlocutory injunction three courses are open to the court in acceding to the application—

(*a.*) Injunction simply.

(*b.*) Interim injunction, plaintiff undertaking as to damages.

(*c.*) Injunction directed to stand over until trial, defendant keeping an account.

The plaintiff must deliver particulars of breaches and the defendant particulars of objections to the patent.

It may be noted that the first statute defining patent rights is the Statute of Monopolies (21 Jac. I. c. 3), patent rights being originally a privilege granted by the Crown as restrained by legislative enactments. Five conditions are essential to the validity of a patent; the article to be patented must be—

(*a.*) A manufacture.

(*b.*) New invention.

(*c.*) The patentee must be the true and first inventor.

(*d.*) Of general public utility; and

(*e.*) A complete specification must be duly filed.

2. Copyrights.

Copyright is the exclusive right of multiplying copies of an original work or composition.

Copyright comprises both

(*a.*) The right of the author to publish or not, and to restrain others from publishing.

And the publication of *unpublished* manuscript may be restrained. *Duke of Queensberry* v. *Shebbeare.*

(*b.*) The right after publication of republishing, and restraining others from doing so.

The plaintiff must in the first place make out his title by *registration* and otherwise, and this done, the principal question at issue is whether or not there has been an infringement, *i.e.* piracy or no piracy; and

(*a.*) Quotations, abridgments, use of common materials will not constitute any infringement if *bona fide*, otherwise if *malâ fide.*

(*b.*) Copyright exists in orally delivered lectures, and publication by hearers is an infringement.

Abernethy v. *Hutchinson.*

Even if the publication be in shorthand only.

Nicols v. *Pitman.*

By 5 & 6 Will. IV. c. 65, a lecturer, in order to obtain copyright in his lecture, must give two previous days' notice thereof to two justices of the peace

residing within five miles of the place proposed for delivery. The statute does not affect lectures delivered in a university or public school.

There is no copyright in the title of a book or newspaper, although there may be in its mere external appearance. *Walter* v. *Emmott*; *Walter* v. *Howe*. And there is no copyright in libellous or immoral works.

(*c.*) As to private letters, literary or otherwise—

(1.) The writer may restrain their publication. *Pope* v. *Curl*.

(2.) The party written to may restrain their publication by a stranger.

(3.) Publication may, however, be permitted on grounds of public policy.

As to *dramatic* pieces and *musical* compositions, there are two rights of property, namely—

(*a.*) The copyright.

(*b.*) The right of representation or performance,

And these rights may be separated. It should be noted that the right of representation will not pass by the assignment of the copyright unless so expressed.

By the Musical Compositions Act, 1882 (45 & 46 Vict. c. 40), the owner of the copyright in any musical composition published after the Act must print on the title-page a notice that the right of representation is reserved in order to avail himself of his right to exclusive representation.

By the Copyright (Musical Compositions) Act, 1888, it is provided that, notwithstanding the provisions of 3 & 4 Will. IV. c. 15, the amount of the penalty or damages in respect of the unauthorised representation of any musical composition, published before or after the Act, and the costs of any such proceedings, shall be in the absolute discretion of the judge.

Copyright is in the *description* and not in the thing described, whereas patent is in *the thing described*.

3. Trade-marks.

A trade-*mark* has been defined as the symbol by which a man causes his goods or wares to be identified and known in the market. The law on this subject

is now regulated by the Patent Designs and Trade-Marks Acts, 1883–88.

Prior to the Trade-Marks Registration Acts, 1875–76 (repealed by the Patent Designs and Trade-Marks Act, 1883, which practically re-enacts their provisions), the right of equity to protect from infringement of trade-marks was based not upon any *property* in them, for it was said there is no property in a trade-mark, but upon the *fraudulent* misrepresentation.

Turton v. *Turton; Burgess* v. *Burgess; Cocks* v. *Chandler.*

Some doubt, however, exists as to whether this jurisdiction was not founded upon property in the sole application of the symbol.

Leather-Cloth Co. v. *American Leather-Cloth Co.*

At any rate, it was laid down that it was not necessary to prove fraud in order to entitle a party to relief,

Singer Machine Manufrs. v. *Wilson.*

But now, if a trade-mark or *trade-name* has been duly registered under the Act, the owner has a true property in it, to the extent the trade-mark is used in connection with goods, but not further.

Under the Patent Designs and Trade-Marks Acts, 1883–88, no person can sue for infringement of a trade-mark unless it is duly registered. Registration is *primâ facie*, and after five years CONCLUSIVE evidence of the right to the trade-mark. But an injunction will only be granted if defendant's mark is so similar to the plaintiff's as to be calculated to deceive.

In order that a *fancy word* may be registered as such, it must be an invented word, or a word having no reference to the character or quality of the goods, and not being a geographical name.

By *Lord Cairns's Act* (21 & 22 Vict. c. 27) power was given to equity courts to award damages, wherever it has jurisdiction to grant an *injunction* or *specific performance*, either in addition to or in substitution for such injunction or performance. It is now repealed, but the right of the Chancery Division to award damages in lieu of or in addition to an injunction is preserved.

By *Rolt's Act* (25 & 26 Vict. c. 42), now repealed, power

was given to equity courts to determine all questions, whether of law or fact, in every case where relief or remedy was sought in equity.

By the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125, s. 79), power was given to courts of law to grant injunctions where the injured party might and *had brought his action.*

And now, under the Judicature Acts, as has been stated, all courts are upon the same footing in respect of granting injunctions, although relief is generally sought in the Chancery Division, whenever before these Acts the aid of equity would have been invoked.

Mandatory injunctions, ordering some act to be done, in general require a much stronger case to be made out than prohibitory injunctions, especially if interlocutory.

Durrell v. *Pritchard.*

CHAPTER XI.

PARTITION.

THREE kinds of co-owners are recognised at law—

(1.) Coparceners—where a person leaves several co-heirs. These alone could originally compel partition; hence their name, *parceners.*

(2.) Joint-tenants—where property is limited to two or more persons without words of division.

(3.) Tenants in common—where property is limited to several, with words defining the aliquot shares each is to take. (*Haynes' Eq.*, 161.)

Courts of law, however, had power given them by statute to compel partition in every case by means of a writ of partition.

Equity assumed jurisdiction wherever the title was purely equitable, so that partition could not be directed at law, and generally in all cases on the ground of the inadequacy of the legal remedy; for courts of law could not effectuate a partition by mutual conveyances, or order any other than an *equal* partition. The procedure in suits for partition was to issue a commission to be completed by mutual conveyances. Now, a

reference to chambers is made to ascertain what would be a proper division. *Agar* v. *Fairfax.*

No suit for partition could be maintained by a reversioner or a person claiming under a disputed title.

Equity had no power to order a sale in lieu of partition; great inconvenience and difficulty consequently occurred where property small. *Turner* v. *Morgan.*

Now, however, by the Partition Act, 1868 (31 & 32 Vict. c. 40), amended by the Partition Act, 1876 (39 & 40 Vict. c. 17), the Court (Chancery Division)—

(1.) Has *power*, on request of any interested party, notwithstanding the dissent or disability of any others, to order a sale in lieu of partition, in the event of special circumstances rendering it more beneficial, and also notwithstanding the majority dissent, and are ready to purchase the shares of those requesting a sale. *Gilbert* v. *Smith.*

(2.) Is *bound*, on request of parties interested to extent of a moiety, to order a sale, unless good reason to the contrary. *Pemberton* v. *Barnes.*

(3.) Has *power*, on request of any interested party, to order a sale, unless the other interested parties undertake to purchase his share.

Athough the sale is usually carried out under the direction of the court, it may for good reason be ordered to be made altogether out of court.

CHAPTER XII.

INTERPLEADER.

AN INTERPLEADER has been defined as a proceeding by which a person from whom two or more other persons, whose rights he cannot readily determine, have claimed the same thing, wherein he himself claims no interest, other than for charges or costs, can compel them to contest the matter between themselves, without involving him in any vexatious litigation respecting it. (*Sm. Man.*, 515.)

Interpleader, although it existed at law, had a very limited

application, being (prior to the 1 & 2 Will. IV. c. 58, and 23 & 24 Vict. c. 124) restricted to cases of joint bailments.

To enable a party to interplead in equity, it was essential that—

(1.) He should have no personal interest in the subject-matter. *Mitchell* v. *Hayne.*

(2.) The whole of the rights claimed by the defendants should be finally determined by the litigation, and the plaintiff therefore be under no personal liability. *Crawshay* v. *Thornton.*

(3.) The titles of the claimants should be derived the one from the other, or both from a common source.

No interpleader *was* allowed in equity, as a general rule, in cases of—

(1.) Adverse *independent legal* titles.

(2.) Agent against principal, unless the latter had created a lien in favour of a third party.

(3.) Tenant against landlord, and a stranger claiming by a paramount title, unless the *same* rent was claimed by persons in privity of contract or of tenure.

(4.) Sheriff against claimants, for by the seizure he became a wrongdoer, unless there were conflicting equitable claims.

Under the 1 & 2 Will. IV. c. 58, and 23 & 24 Vict. c. 124, courts of law acquired more extensive jurisdiction, the former statute extending the benefit of interpleader to sheriffs, and the latter to parties whose titles were not derived from a common source. These statutes, however, only extended this benefit to *defendants in an action*, while in equity it was not necessary that proceedings should have been actually commenced.

Now the whole procedure in interpleader cases is governed by Order lvii. under the Judicature Acts, whereby the old distinctions between law and equity in this respect have been practically abolished. It is provided by this order that the applicant for relief must satisfy the court that—

(*a.*) He claims no interest in the subject-matter.

(*b.*) He does not collude with other claimants.

(*c.*) He is willing to pay or transfer the subject-matter into court.

PART IV.—THE AUXILIARY JURISDICTION.

NOW OBSOLETE AS A SEPARATE JURISDICTION.

Section I.—Discovery, and Bills to perpetuate Testimony and to take Evidence DE BENE ESSE.

A. *Discovery.*

A BILL of discovery sought no relief, but merely discovery, usually of facts in the knowledge, or documents in the possession or power, of the defendant. Every such bill was in *aid* of proceedings already commenced in another court.

The jurisdiction of equity arose from the former inability of the common law courts to admit the evidence of litigants themselves, or of interested parties, or to compel the production of material documents in the custody of parties.

Defences to a bill of discovery rested upon the following (among other) grounds, which, with comparatively slight modifications, may still be raised as objections to discovery.

(1.) The subject was cognisable in a judicial court.
(2.) The plaintiff was disentitled by his disability.
(3.) The plaintiff had no interest in the subject.
(4.) The defendant was not bound to discover his own title.
(5.) The defendant was protected from making discovery.
(6.) The defendant would thereby expose himself to criminal proceedings or forfeiture.
(7.) The defendant was a mere witness.

Thus—

(*a.*) An heir at law could not, while an heir in tail could, obtain discovery of title-deeds during ancestor's lifetime, for the latter had, but the former had not, a present title.

(*b.*) No discovery was granted in aid of matters not purely civil, or where it would involve a forfeiture.

(*c.*) No discovery from a married woman of facts wherewith to charge her husband, or from any one in breach of professional confidence.

(*d.*) A defendant who was a *bonâ fide* purchaser for value without notice could formerly object to discovery: but he cannot do so now.

Lyell v. *Kennedy*; *Emmerson* v. *Ind.*

Courts of law subsequently acquired jurisdiction, so that the aid of equity was no longer needed; and under the Judicature Acts the peculiar jurisdiction of equity to grant discovery in *aid* has become obsolete.

B. *Bills to Perpetuate Testimony* and *to take Evidence* DE BENE ESSE.

1. Bills to perpetuate testimony.

Their object was to preserve evidence in danger of being lost before a question could be litigated.

A great objection to these bills was that the depositions were not published until after the death of witness. Equity refused to perpetuate testimony if the matter could at once be litigated.

The doctrine of equity as to these bills has been thus stated—

(1.) Any interest, however small and remote, and although contingent only, is sufficient to sustain it.

(2.) Equity will not perpetuate evidence of a right which may be immediately barred.

(3.) A mere expectancy or *spes successionis* was not enough.

(4.) It was only allowed where right to *property* involved.

Dursley v. *Fitzhardinge*; *Townshend Peerage Case.*

By the 5 & 6 Vict. c. 69—

(*a.*) The right to perpetuate was extended to persons claiming titles, dignities, or offices.

(*b.*) A person who would, under the circumstances alleged by him, become entitled upon the happening of *any future event*, may perpetuate testimony.

So that by this Act points 3 and 4 above enumerated were altered, and no longer exist.

Under the Legitimacy Declaration Act, 1858, the Divorce Division has power to perpetuate testimony by making decrees declaratory of the legitimacy of the petitioner, or of the validity

of his marriage, or that of his parents or grandparents, and *vice versa*.

The Judicature Acts do not specifically deal with this subject, and under them an action in the nature of a bill to perpetuate testimony may still be brought.

2. Bills to take evidence *de bene esse*.

These bills were distinguished from those to perpetuate testimony by the fact that the former related to matters involved in an *existing action*, while it was a fatal objection to the latter that they might be subjects of immediate litigation.

These bills would be allowed for the purpose of taking evidence of important witnesses, too aged or infirm to travel, or in a precarious state of health, or resident abroad.

Courts of law were sufficiently empowered in this respect by the 13 Geo. III. c. 63, and 1 Will. IV. c. 22, and now, under the Judicature Acts, in lieu of any bill or action there would be a mere order to examine *de bene esse*, obtained on a summary application in the pending cause or matter.

Section II.—Bills QUIA TIMET and *Bills of Peace.*

A. Bills *quia timet.*

In the nature of writs of precaution in order to prevent wrongs, as by appointment of receivers, directing security to be given or granting injunctions. Actions in the nature of bills *quia timet* may still be brought, but in general seek other substantive relief. No such action will lie unless the plaintiff prove the apprehended danger to be both imminent and of a substantial kind, or the apprehended injury to be irreparable. *Fletcher* v. *Bealey.*

B. Bills of peace.

Distinguished from bills *quia timet* by the circumstance that they were most generally brought after the right had been tried at law.

A bill of peace has been defined as a proceeding filed to establish and perpetuate, in favour of or against a number of persons, some general private right, which from its nature is likely to be sought to be established or overthrown by different persons at different times and by

different actions; or to confirm and perpetuate a right which has been satisfactorily established by two or more trials at law, but is in danger of being again controverted. (*Sm. Man.*, 519.)

They were thus brought to prevent—

(1.) A multiplicity of suits.

Sheffield Waterworks v. *Yeomans; Mayor of York* v. *Pilkington.*

(2.) Oppressive litigation. *Earl of Bath* v. *Sherwin.*

Prior to *Rolt's Act* (25 & 26 Vict. c. 42), equity would direct the right of the plaintiff to be established by a trial at law, but under that Act it had power to determine the right itself.

Actions in the nature of bills of peace may still be brought, and under the Judicature Acts, the court before whom the action is pending will both establish the right and grant an injunction in the same judgment.

Section III.—Cancelling and Delivering up Documents.

Courts of equity have jurisdiction in certain cases to direct the cancellation, rescission, or delivery up of instruments which have answered their purpose or are voidable or void, upon the principle of *quia timet*, for fear such instruments should be subsequently vexatiously used when evidence has been lost. This relief is in the discretion of the court, and not granted as a matter of right.

Voluntary instruments are not, as a rule, relieved against, and even where relief is granted, the plaintiff is put upon terms. The mere fact that no power of revocation is reserved does not amount to proof that he did not know what he was doing.

Relief was generally granted to a plaintiff who had a good defence in equity not available at law; although all defences are now available at law, the equity jurisdiction remains practically exclusive.

The following rules have been laid down :—

I. Voidable instruments

(1.) Cancelled, where

(*a.*) Defendant guilty of actual or constructive fraud, in which plaintiff has not participated.

(*b.*) Constructive fraud on public policy, in which plaintiff has participated, if public policy defeated by allowing instrument to stand.

(*c.*) Constructive fraud in both parties, but both not actually *in pari delicto.*

(2.) Not cancelled, where

(*a.*) Plaintiff sole guilty party.

(*b.*) Plaintiff has participated equally in the fraud.

(*c.*) Instrument is founded on illegality.

II. Void instruments:

(1.) Delivered up — where the perpetration of further wrong would be thereby prevented, upon the general principle of equity, that prevention is better than cure.

(2.) Not delivered up—where the illegality appears on the face of the instrument; for in such a case there can be no fear that lapse of time will deprive a party of his defence.

The Judicature Acts have not altered the grounds of this jurisdiction, and have assigned it to the Chancery Division exclusively.

Section IV.—Bills to Establish Wills.

Formerly ecclesiastical courts had cognisance of wills of personalty, and common law courts of wills of realty, the jurisdiction of equity only existing where a will came incidentally before it; in which case, if the parties did not admit the validity of the will, and it had not been established elsewhere, equity would either itself establish the will, proving it *per testes*, and enjoin the heir, or direct an issue to be tried for that purpose.

Under the Probate Act (20 & 21 Vict. c. 77) the Court of Probate (Probate Division) is the proper court having jurisdiction over wills of personalty, and also of realty upon citation of the heir and devisee.

A devisee in possession, whether legal or equitable, might have had a will of realty established in equity against the heir, even though the heir had not brought ejectment.

Boyse v. *Rossborough.*

And not only against the heir, but against all other opposing parties. *Lovett* v. *Lovett.*

But the heir could only come into equity to have the will established *by consent,* for he had a legal remedy by ejectment.

Now under the Probate Act a will proved in *common* form is *prima facie* proof of the will; but if in *solemn* form, is not only sufficient, but conclusive proof.

When wills (whether dealing with realty or not) deal with *personalty,* or contain the appointment of an *executor,* the Court of Probate has sole jurisdiction over them, even though fraud or mistake be alleged.

Allen v. *M'Pherson; Meluish* v. *Milton.*

But the Court of Probate (even since the Judicature Acts) has had no jurisdiction in the matter of wills dealing with real estate *only,* and not containing any appointment of executor.

Under the Land Transfer Act, 1897, however, probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

Section V.—Writ of NE EXEAT REGNO.

The writ of *ne exeat regno* is a prerogative writ issued to prevent a person from leaving the realm.

It was originally applied to great political purposes only, and is hence employed in favour of private rights with great caution.

In modern times the writ has only been known as the equity equivalent for common law arrest on mesne process.

As a general rule, the writ was only granted in the case of *equitable* debts, which must be certain in their nature, of a pecuniary character, actually payable, and not contingent. To this rule there were two exceptions, the writ being issued in respect of the following *legal* debts.

(1.) Alimony decreed.

(2.) Where there was an admitted balance due from defendant to plaintiff, who claimed a larger sum.

Since the Judicature Acts a writ of *ne exeat regno* can be issued only in cases which come within the provisions of the Debtors Act, 1869, s. 6. *Drover* v. *Beyer.*

This section provides that where the plaintiff proves, at

any time before final judgment, to the satisfaction of a judge, that—

(1.) The plaintiff has good cause of action against the defendant to the amount of £50 or upwards;

(2.) That there is probable cause for believing that the defendant is about to quit England unless he is apprehended; *and*

(3.) That the absence of defendant will materially prejudice the plaintiff in the prosecution of his action;

the judge may order such defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not go out of England without the leave of the court. Where the action is for a penalty or sum in the nature of a penalty other than a penalty in respect of any contract, it is not necessary to prove item No. 3, and the security given is to be to the effect that any sum recovered against the defendant shall be paid, or the defendant rendered to prison. These circumstances are practically the same as those under which an order to hold to bail can be obtained in the Queen's Bench Division.

Under the Bankruptcy Act, 1883, a debtor may be arrested if he is about to abscond after a bankruptcy notice has been issued or a bankruptcy petition presented against him.

INDEX.

INDEX.

THE END

Printed by BALLANTYNE, HANSON & Co.
Edinburgh & London

Telegraphic Address: "POLYGRAPHY, LONDON."

A CATALOGUE

OF

LAW WORKS

PUBLISHED AND SOLD BY

STEVENS & HAYNES,

Law Publishers, Booksellers & Exporters,

13, BELL YARD, TEMPLE BAR,

LONDON.

BOOKS BOUND IN THE BEST BINDINGS.

Works in all Classes of Literature supplied to Order.

FOREIGN BOOKS IMPORTED.

LIBRARIES VALUED FOR PROBATE, PARTNERSHIP, AND OTHER PURPOSES.

LIBRARIES OR SMALL COLLECTIONS OF BOOKS PURCHASED.

A large Stock of Reports of the various Courts of England, Ireland, and Scotland, always on hand.

Catalogues and Estimates Furnished, and Orders Promptly Executed.

NOTE.—*To avoid confusing our firm with any of a similar name, we beg to notify that we have no connexion whatever with any other house of business, and we respectfully request that Correspondents will take special care to direct all communications to the above names and address.*

INDEX OF SUBJECTS.

INDEX OF SUBJECTS—*continued.*

INDEX OF SUBJECTS—*continued.*

INDEX OF SUBJECTS—*continued.*

Third Edition, in 8vo, price 21*s.*, cloth,

THE LAWS OF INSURANCE:

Fire, Life, Accident, and Guarantee.

EMBODYING

CASES IN THE ENGLISH, SCOTCH, IRISH, AMERICAN, AND CANADIAN COURTS.

By JAMES BIGGS PORTER,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

ASSISTED BY

W. FEILDEN CRAIES, M.A., AND THOMAS S. LITTLE,

OF THE INNER TEMPLE, BARRISTERS-AT-LAW.

"We find little change in the scope of the book, but the cases decided since 1887, some of them are of considerable importance, together with the new Statute Law relating to the subject, have all been properly placed, and make the third edition as valuable as its predecessor. We do not hesitate to recommend this book to the continued favourable attention of the Legal profession."—*Law Journal.*

"This work, which in the present edition has been brought down to the latest date, was originally published by Mr. Porter in 1884, with the view of supplying a concise treatise on the Laws of Insurances within the compass of a moderate sized volume, and we have no hesitation in saying how excellently the author has attained that object, while overlooking or omitting nothing of importance. The book is one of great value."—*Irish Law Times.*

"The issue of a third edition calls for little more than a record of the fact, for the previous editions of the book established its reputation as a lucid and exhaustive examination of the subject dealt with. It is still, so far as we know, the only book wh ch embraces the whole Law of Insurance (excepting marine) and the present edition is as clear and concise as ever."—*Manchester Guardian.*

"The third edition of Porter's most excellent and concise treatise on the laws relating to Insurance is now before us, and those with any knowledge of, or experience in, insurance affairs of any class or description, will know that, with the name of the author quoted, the contents will be at once inclusive, clear, concise and reliable. . . . . Should certainly be on the shelves of every insurance office, and in the possession of every broker, as well as a necessary addition to a lawyer's library."—*Liverpool Journal of Commerce.*

In Royal 12mo, price 20*s.*, cloth,

QUARTER SESSIONS PRACTICE,

A VADE MECUM OF GENERAL PRACTICE IN APPELLATE AND CIVIL CASES AT QUARTER SESSIONS.

By FREDERICK JAMES SMITH,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW, AND RECORDER OF MARGATE.

Third Edition. In one volume, 8vo, price 21*s.*, cloth,

A COMPENDIUM OF THE LAW RELATING TO EXECUTORS AND ADMINISTRATORS,

With an Appendix of Statutes, Annotated by means of References to the Text. By W. GREGORY WALKER, B.A., Barrister-at-Law, and EDGAR J. ELGOOD, B.C.L., M.A., Barrister-at-Law. Third Edition by E. J. ELGOOD, B.C.L., M.A.

"We highly approve of Mr. Walker's arrangement. . . . . The Notes are full, and as far as we have been able to ascertain, carefully and accurately compiled. . . . . We can commend it as bearing on its face evidence of skilful and careful labour, and we anticipate that it will be found a very acceptable substitute for the ponderous tomes of the much esteemed and valued Williams."—*Law Times.*

"Mr. Walker is fortunate in his choice of a subject, and the power of treating it succinctly; for the ponderous tomes of Williams, however satisfactory as an authority, are necessarily inconvenient for reference as well as expensive. . . . . On the whole we are inclined to think the book a good and useful one."—*Law Journal.*

In royal 12mo, price 4*s.*, cloth,

A DIGEST OF THE LAW OF

PRACTICE UNDER THE JUDICATURE ACTS AND RULES,

AND THE CASES DECIDED IN THE CHANCERY AND COMMON LAW DIVISIONS FROM NOVEMBER 1875 TO AUGUST 1880.

By W. H. HASTINGS KELKE, M.A., Barrister-at-Law.

Second Edition, in 8vo, price 9*s.*, cloth,

THE LAW OF MAINTENANCE AND DESERTION,

AND THE ORDERS OF THE JUSTICES THEREON. Second Edition, including the LAW OF AFFILIATION and BASTARDY. With an Appendix of Statutes and Forms, including the Summary Jurisdiction (Married Womens') Act of, 1895. By TEMPLE CHEVALLIER MARTIN, Chief Clerk of the Lambeth Police Court, Editor of the "Magisterial and Police Guide," &c., and GEORGE TEMPLE MARTIN, M.A., of Lincoln's Inn, Barrister-at-Law.

Third Edition. Crown 8vo, in preparation,

THE LAW OF ARBITRATION AND AWARDS;

With Appendix containing Lord Denman's ARBITRATION BILL, AND STATUTES RELATING TO ARBITRATION, and a collection of Forms and Index. Second Edition. With a Supplement containing an Abstract of the Arbitration Act, 1889. By JOSHUA SLATER, of Gray's Inn, Barrister-at-Law.

*** *The Supplement can be had separately, price 6d.*

In crown 8vo, price 6*s.*, cloth,

THE PRINCIPLES OF MERCANTILE LAW. By

JOSHUA SLATER, of Gray's Inn, Barrister-at-Law.

In 8vo, price 12*s.*, cloth,

THE LAW AND PRACTICE OF DISCOVERY in

the SUPREME COURT of JUSTICE. WITH AN APPENDIX OF FORMS, ORDERS, &C., AND AN ADDENDA GIVING THE ALTERATIONS UNDER THE NEW RULES OF PRACTICE. By CLARENCE J. PEILE, of the Inner Temple, Barrister-at-Law.

In one volume, 8vo, price 18*s.*, cloth,

THE LAW AND PRACTICE RELATING TO

PETITIONS IN CHANCERY AND LUNACY,

INCLUDING THE SETTLED ESTATES ACT, LANDS CLAUSES ACT, TRUSTEE ACT, WINDING-UP PETITIONS, PETITIONS RELATING TO SOLICITORS, INFANTS, ETC., ETC. WITH AN APPENDIX OF FORMS AND PRECEDENTS. By SYDNEY E. WILLIAMS, Barrister-at-Law.

Second Edition, in 8vo, price 28*s.*, cloth,

A SELECTION OF PRECEDENTS OF PLEADING

UNDER THE JUDICATURE ACTS IN THE COMMON LAW DIVISIONS.

With Notes explanatory of the different Causes of Action and Grounds of Defence; and an Introductory Treatise on the Present Rules and Principles of Pleading as illustrated by the various Decisions down to the Present Time.

BY J. CUNNINGHAM and M. W. MATTINSON.

SECOND EDITION.

BY MILES WALKER MATTINSON, of Gray's Inn, Barrister-at-Law, and STUART CUNNINGHAM MACASKIE, of Gray's Inn, Barrister-at-Law.

REVIEWS.

"The notes are very pertinent and satisfactory: the introductory chapters on the present system of pleading are excellent, and the precedents will be found very useful."—*Irish Law Times.*

"A work which, in the compass of a single portable volume, contains a brief Treatise on the Principles and Rules of Pleading, and a carefully annotated body of Forms which have to a great extent gone through the entirely separate sifting processes of Chambers Court, and Judges' Chambers, cannot fail to be a most useful companion in the Practitioner's daily routine."—*Law Magazine and Review.*

Second Edition, in two volumes, royal 8vo, price 70*s.*, cloth.

NEGLIGENCE IN LAW

BEING THE SECOND EDITION OF "PRINCIPLES OF THE LAW OF NEGLIGENCE," RE-ARRANGED AND RE-WRITTEN.

BY THOMAS BEVEN,

OF THE INNER TEMPLE, BARRISTER-AT-LAW; AUTHOR OF "THE LAW OF EMPLOYERS' LIABILITY FOR THE NEGLIGENCE OF SERVANTS CAUSING INJURY TO FELLOW SERVANTS."

REVIEWS.

"These volumes, says Mr. Beven in the preface, may be regarded as a second edition of his 'Principles of the Law of Negligence,' in so far as the subjects treated of in both books are the same; and the materials collected in the one have been used without reserve in the other. As to anything beyond this, he continues, the present is a new work. The arrangement is altogether different from that previously adopted. Nearly a half of the contents of these volumes is absolutely new, and of the remainder there is very little which has not been materially modified, if not in substance, yet in expression.

"Upon its first appearance, the 'Principles of the Law of Negligence' was at once recognized as a work of the highest importance, and the ability and industry which Mr. Beven had brought to bear upon his task laid the profession under no ordinary obligation. The service which he then rendered has been greatly increased by the production of this second edition, and the book deserves a place in the first rank among authoritative expositions of the law.

"The chief characteristic of Mr. Beven s method is thoroughness. He is not himself in a hurry, and it is certainly useless for his readers to be so. The law is to be found in his pages, and, when found, it is clearly enunciated; but it is always deduced from a full and discriminating examination of multitudinous cases—English and American—and readers must be content to survey, leisurely and cautiously, with Mr. Beven, the whole field of judicial exposition, and to follow his own careful and elaborate criticism, if they would gain the full benefit of the results at which he arrives. The book is not meant to be taken up for a hasty reference, and often the lawyer may find it more convenient to resort to a treatise more concise. On the other hand, it will be an invaluable companion in the consideration of any matter which requires research, and the style and arrangement are such that, whether the book is used for purposes of business or of general study, it cannot fail to prove deeply interesting. . . .

"The above account is but a sketch of Mr. Beven's great work. It is impossible within the present limits to give an adequate idea of the variety of topics which are included, of the learning and patience with which they are discussed. Negligence may only be an aspect of the law; but the treatment here accorded to it throws into prominence a host of questions of the utmost importance, both practically and theoretically. By his contribution to the due understanding of these Mr. Beven has placed the profession under a lasting obligation, an obligation which no reader of his work will fail to realize."—*Solicitors' Journal.*

"The book upon which this is founded, and which is in a measure a former edition of the present volumes, has made Mr. Beven an authority on the subject of the law of negligence. He has, in writing these volumes, made full use of his former labours; but he claims that in reality the present work is a new one, and his claim is justified. . . . Just occasionally a well-written and ably-conceived law book is published, and such a one is this of Mr. Beven's. We think that to compare it with other books on the subject would be impossible; it stands easily the best book on the subject. In clear exposition of law, for good classification of subject-matter, for accuracy of detail, and for every arrangement to facilitate reference it cannot be beaten. We may congratulate Mr. Beven upon the accomplishment of his laborious task; he has given to the profession a valuable work, and one which will enhance his reputation as a writer on the Law of Negligence."—*Law Journal*, August 3, 1895.

"He has treated the well-known subject of Negligence in a scientific way, and has not been content with merely collecting, in more or less relevant positions, a number of cases which anyone could find for himself in any Digest of Law Reports, but has endeavoured to reduce from the chaos of decided cases a systematic study of the subject, with clear enunciations of the principles he finds governing the various decisions. In the arrangement of the book the author has been very happy in his method, a by no means easy task in the treatment of a subject in which each branch of it in reality overlaps another. . . . A good index and clear type increase the value of a book which will without doubt receive the hearty commendation of the profession as a successful completion of the author's ambitious task."—*Law Times.*

"In respect of the style of treatment of the subject, the book must be highly commended. It will be of service to every lawyer who wishes rather to get an intelligent understanding of the Law of Negligence, than merely to find correct and reliable legal propositions for practical use, and that whether he be a student or a practitioner. To the student the work is valuable for the searching and well-sustained discussion of the cases; and to the practitioner there are presented all the cases that bear on most points for which he may be in search of authority. One of the chief merits of the work is, that all the available authority on each point is collected and so arranged that it can be easily found."—*Juridical Review.*

"Contains evidence of much serious work, and ought to receive a fair trial at the hands of the profession."—*Law Quarterly Review.*

Second Edition, in royal 8vo, price 38*s.*, cloth,

THE LAW OF THE DOMESTIC RELATIONS,

INCLUDING

HUSBAND AND WIFE: PARENT AND CHILD: GUARDIAN AND WARD: INFANTS: AND MASTER AND SERVANT.

By WILLIAM PINDER EVERSLEY, B.C.L., M.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"We are glad to see a second edition of Mr. Eversley's useful work. There is a convenience in having the various subjects of which it treats collected in one volume, while at the same time each is handled with such fulness as to give the reader all the information he could expect in a separate volume. Mr. Eversley states the law with the most painstaking thoroughness, and has made an exhaustive survey of all the relevant statutes and cases. . . Great care has been taken to make the present edition complete and accurate, and a very full index adds to its utility."—*Solicitors' Journal.*

"Important statutes and cases have come into operation since the first edition, and this has induced Mr. Eversley to give the contracts of married women separate treatment. Careful revision to date now makes this treatise comprehensive and thoroughly reliable."—*Law Times.*

"This is an important and almost a leading treatise on domestic law. The former edition was received with merited favour. Its value has become well known, and now, after an interval of eleven years, the learned author has brought out a second edition."—*Law Journal.*

"It is only necessary to refer to Mr. Eversley's learned and scholarlike work on 'The Domestic Relations,' a book which, though technically belonging to the forbidding ranks of 'Law Books,' is yet full of human interest, and written, moreover, in the English language."—*Edinburgh Review.*

Second Edition, in one volume, royal 8vo, price 32*s.*, cloth,

THE LAW RELATING TO THE

SALE OF GOODS AND COMMERCIAL AGENCY.

SECOND EDITION.

By ROBERT CAMPBELL, M.A.,

OF LINCOLN'S INN, BARRISTER-AT-LAW; ADVOCATE OF THE SCOTCH BAR, AUTHOR OF THE "LAW OF NEGLIGENCE," ETC.

"An accurate, careful, and exhaustive handbook on the subject with which it deals. The excellent index deserves a special word of commendation."—*Law Quarterly Review.*

"We can, therefore, repeat what we said when reviewing the first edition—that the book is a contribution of value to the subject treated of, and that the writer deals with his subject carefully and fully."—*Law Journal.*

Second Edition, in one volume, 8vo, price 28*s.*, cloth,

A TREATISE ON

THE CONSTRUCTION AND EFFECT OF STATUTE LAW.

WITH APPENDICES CONTAINING WORDS AND EXPRESSIONS USED IN STATUTES WHICH HAVE BEEN JUDICIALLY OR STATUTABLY CONSTRUED, AND THE POPULAR AND SHORT TITLES OF CERTAIN STATUTES.

By HENRY HARDCASTLE, BARRISTER-AT-LAW.

SECOND EDITION, REVISED AND ENLARGED, BY W. F. CRAIES,

BARRISTER-AT-LAW.

"The result of Mr. Craies' industry is a sound and good piece of work, the new light thrown on the subject since 1879 having been blended with the old in a thoroughly workmanlike manner. Though less a student's manual than a practitioner's text book, it is the sort of volume an intelligent perusal of which would educate a student better than the reading of much substantial law."—*Saturday Review.*

Fourth Edition, in 8vo, price 30*s.*, cloth,

HANSON'S DEATH DUTIES;

being the Fourth Edition of the Acts relating to Estate Duty Finance, Probate, Legacy, and Succession Duties. Comprising the 36 Geo. III. c. 52; 45 Geo. III. c. 28; 55 Geo. III. c. 184; and 16 & 17 Vict. c. 51; the Customs and Inland Revenue Acts, 43 Vict. c. 14; and 44 Vict. c. 12; also the New Estate Duty Finance Acts, 57 & 58 Vict. c. 30, and 59 & 60 Vict. c. 28; with an Introduction, Copious Notes, and References to all the Decided Cases in England, Scotland, and Ireland. An Appendix and a full Index. By ALFRED HANSON, of the Middle Temple, Esq., Barrister-at-Law, Comptroller of Legacy and Succession Duties. Fourth Edition by LEWIS T. DIBDIN, M.A., D.C.L., and F. H. L. ERRINGTON, M.A., Barristers-at-Law.

"It is remarkable how surely a really good legal treatise finds favour with the Profession. The late Mr. Hanson's edition of the Acts relating to "Estate, Probate, Legacy and Succession Duties," is one of these. . . . . The passing of the Finance Acts of 1894 and 1896 have caused the introduction of new matter. We recognise a decided improvement in the work, which we think will enhance its reputation with the Profession, and all interested in a somewhat difficult subject."—*Law Times.*

"Of all the various treatises on the subject to which the recent Acts have given birth, the one under review strikes us as the fullest and best, and we heartily recommend it to all seeking instruction on these difficult statutes."—*Irish Law Times.*

In one Volume, royal 8vo, price 50*s. net*,

THE LAW AND PRACTICE IN LUNACY;

with the Lunacy Acts, 1890–91 (Consolidated and Annotated); the Rules of Lunacy Commissioners; the Idiots Act, 1886; the Vacating of Seats Act, 1886; the Rules in Lunacy; the Lancashire County (Asylums and other powers) Act, 1891; the Inebriates Act, 1879 and 1888 (Consolidated and Annotated); the Criminal Lunacy Acts, 1800–1884; and a Collection of Forms, Precedents, &c. By A. WOOD RENTON, Barrister-at-Law.

In 8vo, price 30*s.*, cloth,

THE PRACTICE ON THE CROWN SIDE

Of the Queen's Bench Division of Her Majesty's High Court of Justice

(Founded on CORNER'S CROWN OFFICE PRACTICE), including
APPEALS FROM INFERIOR COURTS; WITH APPENDICES OF RULES AND FORMS.

By F. H. SHORT, Chief Clerk of the Crown Office, and
FRANCIS HAMILTON MELLOR, M.A., Barrister-at-Law.

In 8vo, price 12*s.*, cloth,

THE CROWN OFFICE RULES AND FORMS, 1886.

The Supreme Court of Judicature Acts and Rules of the Supreme Court, 1883, relating to the Practice on the Crown side of the Queen's Bench Division; including Appeals from Inferior Courts, Tables of Court Fees, Scales of Costs; together with Notes, Cases, and a Full Index. By F. H. SHORT, Chief Clerk of the Crown Office.

In royal 8vo, 1877, price 10*s.*, cloth,

THE CASE OF LORD HENRY SEYMOUR'S WILL

(WALLACE *v.* THE ATTORNEY-GENERAL).

Reported by FREDERICK WAYMOUTH GIBBS, C.B., Barrister-at-Law,
LATE FELLOW OF TRINITY COLLEGE, CAMBRIDGE.

In 8vo, 1867, price 16*s.*, cloth,

CHARITABLE TRUSTS ACTS, 1853, 1855, 1860;

THE CHARITY COMMISSIONERS' JURISDICTION ACT, 1862; THE ROMAN CATHOLIC CHARITIES ACTS:

Together with a Collection of Statutes relating to or affecting Charities, including the Mortmain Acts, Notes of Cases from 1853 to the present time, Forms of Declarations of Trust, Conditions of Sale, and Conveyance of Charity Land, and a very copious Index. Second Edition.

By HUGH COOKE and R. G. HARWOOD, of the Charity Commission.

Just Published, Demy 8vo, 152 pp. Price 7*s.* 6*d.*

THE LAW RELATING TO UNCONSCIONABLE BARGAINS WITH MONEY-LENDERS.

INCLUDING the History of Usury to the Repeal of the Usury Laws, with Appendices, containing a Digest of Cases, Annotated; relating to Unconscionable Bargains, Statutes, and Forms for the use of Practitioners. By HUGH H. L. BELLOT, M.A., B.C.L., and R. JAMES WILLIS, Barristers-at-Law.

INNER TEMPLE RECORDS. A Calendar of the.

Edited by F. A. INDERWICK, Q.C. Vol. I., 21 Hen. VII. (1505)—45 Eliz. (1603). Imperial 8vo. Roxburghe binding. 1896. 20*s.* net.

In one Volume, 8vo, price 20*s.*, cloth,

THE

PRINCIPLES OF COMMERCIAL LAW;

WITH AN APPENDIX OF STATUTES, ANNOTATED BY MEANS OF REFERENCES TO THE TEXT.

BY JOSEPH HURST AND LORD ROBERT CECIL,

OF THE INNER TEMPLE, BARRISTERS-AT-LAW.

"Their compendium, we believe, will be found a really useful volume, one for the lawyer and the business man to keep at his elbow, and which, if not giving them all that they require, will place in their hands the key to the richer and more elaborate treasures of the Law which lie in larger and more exhaustive works."—*Law Times.*

"The object of the authors of this work, they tell us in their preface, is to state, within a moderate compass, the principles of commercial law. Very considerable pains have obviously been expended on the task, and the book is in many respects a very serviceable one."—*Law Journal.*

Second Edition, in royal 8vo, price 25*s.*, cloth,

THE

RELATIONSHIP OF LANDLORD AND TENANT.

BY EDGAR FOA,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"Will be found of much value to practitioners, and when a second edition has given the author the opportunity of reconsidering and carefully revising his statements in detail, we think it will take its place as a very good treatise on the modern law of landlord and tenant."—*Solicitors' Journal.*

"Mr. Foa is a bold man to undertake the exposition of a branch of law so full of difficulties and encumbered by so many decisions as the Law of Landlord and Tenant. But his boldness is justified by the excellent arrangement and by the lucid statements which characterise his book."—*Law Quarterly Review.*

"Mr. Foa's is a compact work, treating (1) of the creation of the relationship; (2) the incidents of creation (distress) and determination of the relationship; (3) modes and incidents of determination. We commend it to the attention of the Profession and predict for Foa on Landlord and Tenant a very useful and very permanent future."—*Law Times.*

"We have nothing but praise for the work, and we shall be astonished if it does not take rank in course of time as one of the best—if not the best—work for every-day practice on the subject of Landlord and Tenant."—*Law Notes.*

"Without making any invidious comparison with existing works on the subject, we may frankly say that Mr. Foa's work indisputably possesses merit. . . . Our verdict on the book must be a decidedly favourable one."—*Law Students' Journal.*

"'The Relationship of Landlord and Tenant,' written by Mr. Edgar Foa, Barrister-at-Law, affords a striking instance of accuracy and lucidity of statement. The volume should be found useful not only by lawyers but by landlords and tenants themselves, the law in each particular being stated with a simplicity and clearness which bring it within the grasp of the lay mind."—*Law Gazette.*

Second Edition. In royal 8vo, nearly ready,

A TREATISE ON THE

LAW AND PRACTICE

RELATING TO

LETTERS PATENT FOR INVENTIONS.

WITH AN

APPENDIX OF STATUTES, INTERNATIONAL CONVENTION, RULES, FORMS AND PRECEDENTS, ORDERS, &c.

By ROBERT FROST, B.Sc. (Lond.),

FELLOW OF THE CHEMICAL SOCIETY; OF LINCOLN'S INN, ESQUIRE, BARRISTER-AT-LAW.

"In our view a good piece of work may create a demand, and without disparaging existing literature upon the subject of patents, we think the care and skill with which the volume by Mr. Frost has been compiled entitles it to recognition at the hands of the profession. . . . Judging Mr. Frost on this ground, we find him completely satisfactory. A careful examination of the entire volume satisfies us that great care and much labour have been devoted to the production of this treatise, and we think that patent agents, solicitors, the bar and the bench, may confidently turn for guidance and instruction to the pages of Mr. Frost."—*Law Times.*

"Few practice books contain so much in so reasonable a space, and we repeat that it will be found generally useful by practitioners in this important branch of the law. . . . A capital index concludes the book."—*Law Journal.*

"The book is, as it professes to be, a treatise on patent law and practice, the several topics being conveniently arranged and discussed in the thirteen chapters which form the body of the work, to which are appended statutes, rules, and forms. The statements of the law, so far as we have been able to test them, appear to be clear and accurate, and the author's style is pleasant and good. . . . The book is a good one, and will make its way. The index is better than usual. Both paper and type are also excellent."—*Solicitors' Journal.*

Second Edition. In two volumes, royal 8vo, price 50s., cloth,

A PRACTICAL TREATISE ON THE

LAW OF BUILDING AND ENGINEERING CONTRACTS,

And of the DUTIES and LIABILITIES of ENGINEERS, ARCHITECTS, SURVEYORS and VALUERS,

WITH AN APPENDIX OF PRECEDENTS,

ANNOTATED BY MEANS OF REFERENCE TO THE TEXT AND TO CONTRACTS IN USE.

AND AN APPENDIX OF UNREPORTED CASES

ON BUILDING AND ENGINEERING CONTRACTS.

By ALFRED A. HUDSON,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"This is a book of great elaboration and completeness. It appears from the preface that the author has the twofold qualification of technical knowledge of building, gained as an architect, and devotion to the legal aspects of building, engineering, and shipbuilding contracts since he became a member of the bar. . . . . The list of cases cited covers fifty large pages, and they include, not merely English, but American and Colonial decisions. . . . . The book as a whole represents a large amount of well-directed labour, and it ought to become the standard work on its subject."—*Solicitors' Journal.*

"A very full index completes the book. Mr. Hudson has struck out a new line for himself, and produced a work of considerable merit, and one which will probably be found indispensable by practitioners, inasmuch as it contains a great deal that is not to be found elsewhere. The Table of Cases refers to all the reports."—*Law Journal.*

"Mr. Hudson, having abandoned his profession of an architect to become a barrister, hit upon the idea of writing this work, and he has done it with a thoroughness which every houseowner would like to see bestowed upon modern houses. . . . . The Index and Table of Cases reveal a vast amount of industry expended upon detail, and we shall be much surprised if Mr. Hudson does not reap the reward of his labours by obtaining a large and appreciative public."—*Law Times.*

Third Edition. In 8vo, price 10*s.* 6*d.*, cloth,

OUTLINES OF THE LAW OF TORTS.

By RICHARD RINGWOOD, M.A.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW; AUTHOR OF "PRINCIPLES OF BANKRUPTCY," &c., AND LECTURER ON COMMON LAW TO THE INCORPORATED LAW SOCIETY.

"We have always had a great liking for this work, and are very pleased to see by the appearance of a new Edition that it is appreciated by students. We consider that for the ordinary student who wants to take up a separate work on Torts, this is the best book he can read, for it is clear and explanatory, and has good illustrative cases, and it is all contained in a very modest compass. . . . This Edition appears to have been thoroughly revised, and is, we think, in many respects improved."—*Law Students' Journal.*

"The work is one we well recommend to law students, and the able way in which it is written reflects much credit upon the author."—*Law Times.*

"Mr. Ringwood's book is a plain and straightforward introduction to this branch of the law."—*Law Journal.*

*** *Prescribed as a text-book by the Incorporated Law Society of Ireland.*

Sixth Edition, in 8vo, price 21*s.*, cloth,

THE LAW OF COMPENSATION FOR LANDS, HOUSES, &c.

UNDER THE LANDS CLAUSES CONSOLIDATION ACTS, THE RAILWAYS CLAUSES CONSOLIDATION ACTS, THE PUBLIC HEALTH ACT, 1875; THE HOUSING OF THE WORKING CLASSES ACT, 1890; THE METROPOLIS LOCAL MANAGEMENT ACT AND OTHER ACTS,

WITH A FULL COLLECTION OF FORMS AND PRECEDENTS.

By EYRE LLOYD,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

SIXTH EDITION.

By W. J. BROOKS,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"*In providing the legal profession with a book which contains the decisions of the Courts of Law and Equity upon the various statutes relating to the Law of Compensation, Mr. Eyre Lloyd has long since left all competitors in the distance, and his book may now be considered the standard work upon the subject. The plan of Mr. Lloyd's book is generally known, and its lucidity is appreciated; the present quite fulfils all the promises of the preceding editions, and contains in addition to other matter a complete set of forms under the Artizans and Labourers Act, 1875, and specimens of Bills of Costs, which will be found a novel feature, extremely useful to legal practitioners.*"—JUSTICE OF THE PEACE.

In 8vo, price 7*s.*, cloth,

THE SUCCESSION LAWS OF CHRISTIAN COUNTRIES,

WITH SPECIAL REFERENCE TO THE LAW OF PRIMOGENITURE AS IT EXISTS IN ENGLAND.

By EYRE LLOYD, B.A., Barrister-at-Law.

In crown 8vo, price 6*s.*, cloth,

ESSAYS IN JURISPRUDENCE AND LEGAL HISTORY.

By JOHN W. SALMOND, M.A., LL.B. (LOND.),

A BARRISTER OF THE SUPREME COURT OF NEW ZEALAND.

In crown 8vo, price 6*s.*, cloth.

THE FIRST PRINCIPLES OF JURISPRUDENCE.

By JOHN W. SALMOND, M.A., LL.B.,

BARRISTER-AT-LAW; AUTHOR OF "ESSAYS IN JURISPRUDENCE AND LEGAL HISTORY."

In 8vo, price 7s. 6d., cloth,

THE LAW OF

NEGOTIABLE SECURITIES.

CONTAINED IN A COURSE OF SIX LECTURES.

DELIVERED BY WILLIAM WILLIS, ESQ., Q.C.,

AT THE REQUEST OF

THE COUNCIL OF LEGAL EDUCATION.

In one large vol., 8vo, price 32s., cloth,

INSTITUTES AND HISTORY OF ROMAN PRIVATE LAW,

WITH CATENA OF TEXTS.

BY DR. CARL SALKOWSKI, Professor of Laws, Königsberg.

Translated and Edited by E. E. WHITFIELD, M.A. (Oxon.).

In 8vo, price 4s. 6d., cloth,

THE

NEWSPAPER LIBEL AND REGISTRATION ACT, 1881.

WITH A STATEMENT OF THE LAW OF LIBEL AS AFFECTING PROPRIETORS, PUBLISHERS, AND EDITORS OF NEWSPAPERS.

By G. ELLIOTT, Barrister-at-Law, of the Inner Temple.

In one volume, royal 8vo,

CASES AND OPINIONS ON CONSTITUTIONAL LAW,

AND VARIOUS POINTS OF ENGLISH JURISPRUDENCE.

COLLECTED AND DIGESTED FROM OFFICIAL DOCUMENTS AND OTHER SOURCES.

WITH NOTES.

By WILLIAM FORSYTH, M.A., M.P., Q.C.,

STANDING COUNSEL TO THE SECRETARY OF STATE IN COUNCIL OF INDIA,

Author of "Hortensius," "History of Trial by Jury," "Life of Cicero," etc.

late Fellow of Trinity College, Cambridge.

Sixth Edition, in 8vo, price 10*s.* 6*d.*, cloth,

THE PRINCIPLES OF BANKRUPTCY.

WITH AN APPENDIX,

CONTAINING

THE CONSOLIDATED RULES OF 1886, 1890 & 1891, SCALE OF COSTS, AND THE BILLS OF SALE ACTS, 1878, 1882, 1890 & 1891, AND THE RULES THEREUNDER; THE DEEDS OF ARRANGEMENT ACT, 1887, AND THE RULES THEREUNDER.

By RICHARD RINGWOOD, M.A.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW; LATE SCHOLAR OF TRINITY COLLEGE, DUBLIN.

"We welcome a new edition of this excellent student's book. We have written favourably of it in reviewing previous editions, and every good word we have written we would now reiterate and perhaps even more so. . . . In conclusion, we congratulate Mr. Ringwood on this edition, and have no hesitation in saying that it is a capital student's book."—*Law Students' Journal.*

"This edition is a considerable improvement on the first, and although chiefly written for the use of Students, the work will be found useful to the practitioner."—*Law Times.*

Seventh Edition, in 8vo, price 21*s.*, cloth,

A TREATISE UPON

THE LAW OF BANKRUPTCY

AND

BILLS OF SALE.

WITH AN APPENDIX

CONTAINING

THE BANKRUPTCY ACTS, 1883—1890; GENERAL RULES, FORMS, SCALE OF COSTS AND FEES; RULES UNDER S. 122 OF 1888; DEEDS OF ARRANGEMENT ACTS, 1887—1890; RULES AND FORMS; BOARD OF TRADE AND COURT ORDERS; DEBTORS ACTS, 1869, 1878; RULES AND FORMS; BILLS OF SALE ACTS, 1878—1891, ETC.; ETC.

By EDWARD T. BALDWIN, M.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"The seven editions simply record the constant progress of case growth and statute law. It is a remarkably useful compendium."—*Law Times*, July 20, 1895.

"As a well-arranged and complete collection of case law this book should be found of great use."—*Law Journal*, July 20, 1895.

"Carefully brought down to date."—*Solicitors' Journal*, November 9, 1895.

"We have always considered the work an admirable one, and the present edition is quite up to the previous high standard of excellence. We know of no better book on bankruptcy for the practitioner's library."—*Law Students' Journal*, August, 1895.

"Practitioners may, we feel sure, safely rely on its accuracy. A distinct acquisition for reference purposes to the shelf of any practitioner."—*Law Notes.*

Third Edition, in one vol., price 20*s.*, cloth,

A COMPENDIUM OF THE LAW OF PROPERTY IN LAND.

FOR THE USE OF STUDENTS AND THE PROFESSION.

THIRD EDITION WITH ADDENDA, GIVING THE LAND TRANSFER ACT, 1897, WITH REFERENCES TO THE TEXT.

BY WILLIAM DOUGLAS EDWARDS, LL.B.,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

"Mr. Edwards' treatise on the Law of Real Property is marked by excellency of arrangement and conciseness of statement. . . . . We are glad to see, by the appearance of successive editions, that the merits of the book are appreciated."—*Solicitors' Journal.*

"So excellent is the arrangement that we know of no better compendium upon the subject of which it treats."—*Law Times.*

"We welcome the third edition of Mr. Edwards' book. It has by this time secured a first place amongst students' books on Real Property, both by its admirable arrangement of topics and by the clearness of its statements. The present edition incorporates the Statutes and Cases for 1896."—*Cambridge Review.*

"An established place in legal literature is occupied by Mr. W. D. Edwards' 'Compendium of the Law of Property in Land,' the third edition of which has just been published."—*The Globe.*

"We consider it one of the best works published on Real Property Law."—*Law Students' Journal.*

"Another excellent compendium which has entered a second edition is Mr. Edwards' 'Compendium of the Law of Property in Land.' No work on English law is written more perspicuously."—*Law Times.*

"The author has the merit of being a sound lawyer, a merit perhaps not always possessed by the authors of legal text-books for students."—*Law Quarterly Review.*

"Altogether it is a work for which we are indebted to the author, and is worthy of the improved notions of law which the study of jurisprudence is bringing to the front."—*Solicitors' Journal.*

Third Edition, royal 8vo, price 38*s.*, cloth,

THE

LAW OF CORPORATIONS AND COMPANIES.

A TREATISE ON THE DOCTRINE OF

ULTRA VIRES:

BEING

An Investigation of the Principles which Limit the Capacities, Powers, and Liabilities of

CORPORATIONS,

AND MORE ESPECIALLY OF

JOINT STOCK COMPANIES.

BY SEWARD BRICE, M.A., LL.D., LONDON,

OF THE INNER TEMPLE, ONE OF HER MAJESTY'S COUNSEL.

THIRD EDITION.

REVISED THROUGHOUT AND ENLARGED, AND CONTAINING THE UNITED STATES AND COLONIAL DECISIONS.

REVIEWS.

". . . . *On the whole, we consider Mr. Brice's exhaustive work a valuable addition to the literature of the profession.*"—SATURDAY REVIEW.

"It is the Law of Corporations that Mr. Brice treats of (and treats of more fully, and at the same time more scientifically, than any work with which we are acquainted), not the law of principal and agent; and Mr. Brice does not do his book justice by giving it so vague a title."—*Law Journal.*

"On this doctrine, first introduced in the Common Law Courts in *East Anglian Railway Co.* v. *Eastern Counties Railway Co.*, BRICE ON ULTRA VIRES may be read with advantage."—*Judgment of* LORD JUSTICE BRAMWELL, *in the Case of Evershed* v. *L. & N. W. Ry. Co.* (L. R., 3 Q. B. Div. 141.).

Seventh Edition, in royal 8vo, price 36*s.*, cloth,

BUCKLEY ON THE COMPANIES ACTS.

THE LAW AND PRACTICE UNDER THE COMPANIES ACTS, 1862 TO 1893; AND THE LIFE ASSURANCE COMPANIES ACTS, 1870 TO 1872; INCLUDING THE COMPANIES (MEMORANDUM OF ASSOCIATION) ACT; THE COMPANIES (WINDING-UP) ACT, AND THE DIRECTORS' LIABILITY ACT.

A Treatise on the Law of Joint Stock Companies.

CONTAINING THE STATUTES, WITH THE RULES, ORDERS, AND FORMS, TO REGULATE PROCEEDINGS.

SEVENTH EDITION BY THE AUTHOR, and

A. C. CLAUSON, Esq., M.A.,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

Second Edition, with Supplement, in royal 8vo, price 46*s.*, cloth.

THE LAW RELATING TO

SHIPMASTERS AND SEAMEN.

THEIR APPOINTMENT, DUTIES, POWERS, RIGHTS, LIABILITIES AND REMEDIES.

BY THE LATE JOSEPH KAY, ESQ., M.A., Q.C.

Second Edition.

WITH A SUPPLEMENT

Comprising THE MERCHANT SHIPPING ACT, 1894, The Rules of Court made thereunder, and the (proposed) Regulations for Preventing Collisions at Sea.

BY THE HON. J. W. MANSFIELD, M.A., AND

G. W. DUNCAN, ESQ., B.A.,

OF THE INNER TEMPLE, BARRISTERS-AT-LAW.

REVIEWS OF THE SECOND EDITION:

"It will, however, be a valuable book of reference for any lawyer desiring to look up a point connected with the rights and duties of a shipmaster or a seaman—the list of cases cited covers nearly seventy pages—while any shipmaster, shipagent or consul who masters this edition will be well posted up. . . . . We hope this new Edition will be quickly appreciated, for the Editors have carried out an arduous task carefully and well."—*Law Journal*, April, 1894.

"It has had practical and expert knowledge brought to bear upon it, while the case law is brought down to a very late date. Considerable improvement has been made in the index."—*Law Times*, April, 1894.

In royal 8vo, price 10*s.* 6*d.*, cloth,

THE MERCHANT SHIPPING ACT, 1894;

With the Rules of Court made thereunder. Being a Supplement to KAY'S LAW RELATING TO SHIPMASTERS AND SEAMEN. To which are added the (proposed) Regulations for Preventing Collisions at Sea. With Notes. By Hon. J. W. MANSFIELD, M.A., and G. W. DUNCAN, B.A., of the Inner Temple, Barristers-at-Law.

Fourth Edition, in royal 8vo, price 40*s.*, cloth,

THE JUDGMENTS, ORDERS, AND PRACTICE OF THE SUPREME COURT,

CHIEFLY in RESPECT to ACTIONS ASSIGNED to the CHANCERY DIVISION.

By LOFTUS LEIGH PEMBERTON,

One of the registrars of the Supreme Court of Judicature; and Author of "The Practice in Equity by way of Revivor and Supplement."

"The work under notice ought to be of considerable service to the profession. . . . . The forms throughout the work—and they are the most important element in it—appear to us to be accurate, and of the most approved type. This fact alone will commend the new edition to practitioners in the Chancery Division. There is a useful table of the Lord Chancellors and Judges at the beginning of the book, and a very full index concludes it."—*Law Times.*

In demy 12mo, price 5*s.*,

THE STATUTORY LAW RELATING TO TRUSTEE SAVINGS BANKS (1863—1891),

together with the Treasury Regulations (1888—1889), and the Scheme for the Appointment of the Inspection Committee of Trustee Savings Banks. By URQUHART A. FORBES, of Lincoln's Inn, Esq., Barrister-at-Law, Author of "The Law Relating to Savings Banks;" the "Law of Savings Banks since 1878;" and joint Author of "The Law Relating to Water."

In demy 12mo, price 6*s.*, cloth,

THE LAW OF SAVINGS BANKS SINCE 1878;

With a Digest of Decisions made by the Chief Registrar and Assistant Registrars of Friendly Societies from 1878 to 1882, being a Supplement to the Law relating to Trustee and Post Office Savings Banks.

By U. A. FORBES, of Lincoln's Inn, Barrister-at-Law.

*** *The complete work can be had, price* 10*s.* 6*d.*, *cloth.*

In 8vo, price 15*s.*, cloth,

THE LAW AND PRACTICE RELATING TO

THE ADMINISTRATION OF DECEASED PERSONS

BY THE CHANCERY DIVISION OF THE HIGH COURT OF JUSTICE;

WITH AN ADDENDA giving the alterations effected by the NEW RULES of 1883,

AND AN APPENDIX OF ORDERS AND FORMS, ANNOTATED BY REFERENCES TO THE TEXT.

By W. GREGORY WALKER and EDGAR J. ELGOOD,

OF LINCOLN'S INN, BARRISTERS-AT-LAW.

"In this volume the most important branch of the administrative business of the Chancery Division is treated with conciseness and care. Judging from the admirable clearness of expression which characterises the entire work, and the labour which has evidently been bestowed on every detail, we do not think that a literary executorship could have devolved upon a more able and conscientious representative . . . . Useful chapters are introduced in their appropriate places, dealing with the 'Parties to administration actions,' 'The proofs of claims in Chambers,' and 'The cost of administration actions.' To the last-mentioned chapter we gladly accord special praise, as a clear and succinct summary of the law, from which, so far as we have tested it, no proposition of any importance has been omitted . . . . An elaborately constructed table of cases, with references in separate columns to all the reports, and a fairly good index, much increase the utility of the work."—*Solicitors' Journal.*

In Foolscap 8vo, superfine paper, bound in Vellum, price 3*s.* 6*d. net.*

*** *A limited number of copies have been printed upon large paper, price* 7*s.* 6*d. net.*

SCINTILLAE JURIS.

CHARLES J. DARLING, Q.C., M.P. With a Frontispiece and Colophon by FRANK LOCKWOOD, Q.C., M.P. Fourth Edition (Enlarged).

"'Scintillae Juris' is that little bundle of humorous essays on law and cognate matters which, since the day of its first appearance, some years ago, has been the delight of legal circles. . . . It has a quality of style which suggests much study of Bacon in his lighter vein. Its best essays would not be unworthy of the Essays, and if read out, one by one, before a blindfolded *connoisseur*, might often be assigned to that wonderful book."—*Daily News.*

Second Edition, in 8vo, price 25*s.*, cloth,

THE PRINCIPLES OF

THE LAW OF RATING OF HEREDITAMENTS

IN THE OCCUPATION OF COMPANIES.

By J. H. BALFOUR BROWNE,

OF THE MIDDLE TEMPLE, Q.C.,

And D. N. McNAUGHTON, of the Middle Temple, Barrister-at-Law.

"The tables and specimen valuations which are printed in an appendix to this volume will be of great service to the parish authorities, and to the legal practitioners who may have to deal with the rating of those properties which are in the occupation of Companies, and we congratulate Mr. Browne on the production of a clear and concise book of the system of Company Rating. There is no doubt that such a work is much needed, and we are sure that all those who are interested in, or have to do with, public rating, will find it of great service. Much credit is therefore due to Mr. Browne for his able treatise—a work which his experience as Registrar of the Railway Commission peculiarly qualified him to undertake."—*Law Magazine.*

In 8vo, 1875, price 7*s.* 6*d.*, cloth,

THE LAW OF USAGES & CUSTOMS:

A Practical Law Tract.

By J. H. BALFOUR BROWNE,

OF THE MIDDLE TEMPLE, Q.C.

"We look upon this treatise as a valuable addition to works written on the Science of Law."—*Canada Law Journal.*

"As a tract upon a very troublesome department of Law it is admirable—the principles laid down are sound, the illustrations are well chosen, and the decisions and *dicta* are harmonised so far as possible and distinguished when necessary."—*Irish Law Times.*

"As a book of reference we know of none so comprehensive dealing with this particular branch of Common Law. . . . . In this way the book is invaluable to the practitioner."—*Law Magazine.*

In one volume, 8vo, 1875, price 18*s.*, cloth,

THE PRACTICE BEFORE THE RAILWAY COMMISSIONERS

UNDER THE REGULATION OF RAILWAY ACTS, 1873 & 1874;

With the Amended General Orders of the Commissioners, Schedule of Forms, and Table of Fees: together with the Law of Undue Preference, the Law of the Jurisdiction of the Railway Commissioners, Notes of their Decisions and Orders, Precedents of Forms of Applications, Answers and Replies, and Appendices of Statutes and Cases.

By J. H. BALFOUR BROWNE,

OF THE MIDDLE TEMPLE, Q.C.

"Mr. Browne's book is handy and convenient in form, and well arranged for the purpose of reference: its treatment of the subject is fully and carefully worked out: it is, so far as we have been able to test it, accurate and trustworthy. It is the work of a man of capable legal attainments, and by official position intimate with his subject; and we therefore think that it cannot fail to meet a real want and to prove of service to the legal profession and the public."—*Law Magazine.*

In 8vo, 1876, price 7*s.* 6*d.*, cloth,

ON THE COMPULSORY PURCHASE OF THE UNDERTAKINGS OF COMPANIES BY CORPORATIONS,

And the Practice in Relation to the Passage of Bills for Compulsory Purchase through Parliament. By J. H. BALFOUR BROWNE, of the Middle Temple, Q.C.

"This is a work of considerable importance to all Municipal Corporations, and it is hardly too much to say that every member of these bodies should have a copy by him for constant reference. Probably at no very distant date the property of all the existing gas and water companies will pass under municipal control, and therefore it is exceedingly desirable that the principles and conditions under which such transfers ought to be made should be clearly understood. This task is made easy by the present volume. The stimulus for the publication of such a work was given by the action of the Parliamentary Committee which last session passed the preamble of the 'Stockton and Middlesborough Corporations Water Bill, 1876.' The volume accordingly contains a full report of the case as it was presented both by the promoters and opponents, and as his was the first time in which the principle of compulsory purchase was definitely recognised, there can be no doubt that it will long be regarded as a leading case. As a matter of course, many incidental points of interest arose during the progress of the case. Thus, besides the main question of compulsory purchase, and the question as to whether there was or was not any precedent for the Bill, the questions of water compensations, of appeals from one Committee to another, and other kindred subjects were discussed. These are all treated at length by the Author in the body of the work, which is thus a complete legal compendium on the large subject with which it so ably deals."

Second Edition, in crown 8vo, price 12*s.* 6*d.*, cloth.

THE LAW OF EVIDENCE,

By S. L. PHIPSON, M.A., of the Inner Temple, Barrister-at-Law.

"This is a very compendious and accurate volume on a subject which we fear is not studied as much as it should be. The arrangement is excellent, illustrations and examples being given in parallel columns. Its success is thoroughly justified."—*Law Times.*

"The work is compact yet reasonably full, and the rules of law are accompanied by a large number of well-chosen illustrations. The book is somewhat longer than its predecessor, the text being amplified, the index enlarged, and the number of cases cited considerably increased."—*Law Journal.*

"This second edition of Mr. Phipson's work seems to have been brought down to date with great care, and to have the English and Irish cases carefully collated. . . . . The author's mode of contrasting in parallel columns the decisions for or against a particular question, or drawing nice distinctions, can hardly be excelled. The author seems to have succeeded in producing a book handy in size, easy of reference, and replete with information."—*Irish Law Times.*

In 8vo, price 5*s.*, cloth,

THEORIES AND CRITICISMS OF SIR HENRY MAINE.

By MORGAN O. EVANS, Barrister-at-Law.

Contained in his six works, "Ancient Law," "Early Law and Customs," "Early History of Institutions," "Village Communities," "International Law," and "Popular Government," which works have to be studied for the various examinations.

In 8vo, 1872, price 7*s.* 6*d.*, cloth,

AN EPITOME AND ANALYSIS OF

SAVIGNY'S TREATISE ON OBLIGATIONS IN ROMAN LAW.

By ARCHIBALD BROWN, M.A.

EDIN. AND OXON., AND B.C.L. OXON. OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

"Mr. Archibald Brown deserves the thanks of all interested in the science of Law, whether as a study or a practice, for his edition of Herr von Savigny's great work on 'Obligations.' Mr. Brown has undertaken a double task—the translation of his author, and the analysis of his author's matter. That he has succeeded in reducing the bulk of the original will be seen at a glance; the French translation consisting of two volumes, with some five hundred pages apiece, as compared with Mr. Brown's thin volume of a hundred and fifty pages. At the same time the pith of Von Savigny's matter seems to be very successfully preserved, nothing which might be useful to the English reader being apparently omitted."—*Law Journal.*

THE ELEMENTS OF ROMAN LAW.

Second Edition, in crown 8vo, price 6*s.*, cloth,

A CONCISE DIGEST OF THE

INSTITUTES OF GAIUS AND JUSTINIAN.

With copious References arranged in Parallel Columns, also Chronological and Analytical Tables, Lists of Laws, &c. &c.

Primarily designed for the Use of Students preparing for Examination at Oxford, Cambridge, and the Inns of Court.

By SEYMOUR F. HARRIS, B.C.L., M.A.,

WORCESTER COLLEGE, OXFORD, AND THE INNER TEMPLE, BARRISTER-AT-LAW;
AUTHOR OF "UNIVERSITIES AND LEGAL EDUCATION."

"*This book contains a summary in English of the elements of Roman Law as contained in the works of Gaius and Justinian, and is so arranged that the reader can at once see what are the opinions of either of these two writers on each point. From the very exact and accurate references to titles and sections given he can at once refer to the original writers. The concise manner in which Mr. Harris has arranged his digest will render it most useful, not only to the students for whom it was originally written, but also to those persons who, though they have not the time to wade through the larger treatises of Poste, Sanders, Ortolan, and others, yet desire to obtain some knowledge of Roman Law.*"—OXFORD AND CAMBRIDGE UNDERGRADUATES' JOURNAL.

Fifth Edition, in crown 8vo, price 15*s.*, cloth,

ENGLISH CONSTITUTIONAL HISTORY:

FROM THE TEUTONIC INVASION TO THE PRESENT TIME.

Designed as a Text-book for Students and others,

By T. P. TASWELL-LANGMEAD, B.C.L.,

OF LINCOLN'S INN, BARRISTER-AT-LAW, FORMERLY VINERIAN SCHOLAR IN THE UNIVERSITY AND LATE PROFESSOR OF CONSTITUTIONAL LAW AND HISTORY, UNIVERSITY COLLEGE, LONDON.

Fifth Edition, Revised throughout, with Notes,

By PHILIP A. ASHWORTH,

BARRISTER-AT-LAW; TRANSLATOR OF GNEIST'S "HISTORY OF THE ENGLISH CONSTITUTION."

"We heartily commend this valuable book to the study of all, whether Conservative or Liberal in politics, who desire to take an intelligent part in public life."—*The New Saturday.*

"'Taswell-Langmead' has long been popular with candidates for examination in Constitutional History, and the present edition should render it even more so. It is now, in our opinion, the ideal students' book upon the subject."—*Law Notes.*

"Mr. Carmichael has performed his allotted task with credit to himself, and the high standard of excellence attained by Taswell-Langmead's treatise is worthily maintained. This, the third edition, will be found as useful as its predecessors to the large class of readers and students who seek in its pages accurate knowledge of the history of the constitution."—*Law Times.*

"To the student of constitutional law this work will be invaluable. . . . . The book is remarkable for the raciness and vigour of its style. The editorial contributions of Mr. Carmichael are judicious, and add much to the value of the work."—*Scottish Law Review.*

"The work will continue to hold the field as the best class-book on the subject."—*Contemporary Review.*

"The book is well known as an admirable introduction to the study of constitutional law for students at law. . . . . Mr. Carmichael appears to have done the work of editing, made necessary by the death of Mr. Taswell-Langmead, with care and judgment."—*Law Journal.*

"The work before us it would be hardly possible to praise too highly. In style, arrangement, clearness, and size, it would be difficult to find anything better on the real history of England, the history of its constitutional growth as a complete story, than this volume."—*Boston (U.S.) Literary World.*

"As it now stands, we should find it hard to name a better text-book on English Constitutional History."—*Solicitors' Journal.*

"Mr. Taswell-Langmead's compendium of the rise and development of the English Constitution has evidently supplied a want. . . . . The present Edition is greatly improved. . . . We have no hesitation in saying that it is a thoroughly good and useful work."—*Spectator.*

"It is a safe, careful, praiseworthy digest and manual of all constitutional history and law."—*Globe.*

"The volume on English Constitutional History, by Mr. Taswell-Langmead, is exactly what such a history should be."—*Standard.*

"Mr. Taswell-Langmead has thoroughly grasped the bearings of his subject. It is, however, in dealing with that chief subject of constitutional history—parliamentary government—that the work exhibits its great superiority over its rivals."—*Academy.*

Second Edition, in 8vo, price 6*s.*, cloth,

HANDBOOK TO THE INTERMEDIATE AND FINAL LL.B. OF LONDON UNIVERSITY;

(PASS AND HONOURS),

INCLUDING A COMPLETE SUMMARY OF "AUSTIN'S JURISPRUDENCE," AND THE EXAMINATION PAPERS OF LATE YEARS IN ALL BRANCHES.

By a B.A., LL.B. (Lond.).

In crown 8vo, price 3*s.*; or Interleaved for Notes, price 4*s.*,

CONTRACT LAW.

QUESTIONS ON THE LAW OF CONTRACTS. WITH NOTES TO THE ANSWERS. *Founded on "Anson," "Chitty," and "Pollock."*

By PHILIP FOSTER ALDRED, D.C.L., Hertford College and Gray's Inn.

Twelfth Edition, in 8vo, price 21*s.*, cloth,

THE PRINCIPLES OF EQUITY.

INTENDED FOR THE USE OF STUDENTS AND THE PROFESSION.

By EDMUND H. T. SNELL,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

TWELFTH EDITION.

By ARCHIBALD BROWN, M.A. EDIN. & OXON., & B.C.L. OXON.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW; AUTHOR OF "A NEW LAW DICTIONARY," "AN ANALYSIS OF SAVIGNY ON OBLIGATIONS," AND THE "LAW OF FIXTURES."

REVIEWS.

"The Twelfth Edition of this work will be welcomed. . . . The book is now a standard work on the 'Principles of Equity,' and we suppose that very few aspirants for the Bar and the Rolls present themselves for examination without reading the book more than once. . . . There is no book on Equity which can come near 'Snell.'"—*Law Notes.*

"'Snell' remains, as it has been for a generation, the indisputable introduction to the study of Equity."—*Oxford Magazine.*

"The fact that 'Snell's Principles of Equity' has reached the Twelfth Edition is in itself sufficient to show the warm approval of the profession. It is a wonderful compendium of Equity Principles, so arranged as to lead the reader steadily on from simpler to more abstruse questions; and is most useful, not only to the student, but also to the barrister in his every day work."—*Irish Law Times.*

"The student who has mastered 'Snell' will know as much about Equity as most practitioners, and more than some. . . . This edition appears to have been brought well up to date. It is, moreover, furnished with an excellent index. This is fortunate, as 'Snell' holds the field as a treatise on Equity."—*Law Journal.*

"This is the Eighth Edition of this student's text-book which the present editor has brought out. . . . the book is a good introduction to Equity, and is additionally useful by having a full index."—*Solicitors' Journal.*

"Whether to the beginner in the study of the principles of Equity, or to the practising lawyer in the hurry of work, it can be unhesitatingly recommended as a standard and invaluable treatise."—*Cambridge Review.*

"This is now unquestionably the standard book on Equity for students."—*Saturday Review.*

"*We know of no better introduction to the Principles of Equity.*"—CANADA LAW JOURNAL.

Sixth Edition, in 8vo, price 6*s.*, cloth,

AN ANALYSIS OF SNELL'S PRINCIPLES OF EQUITY.

FOUNDED ON THE TWELFTH EDITION. With Notes thereon. By E. E. BLYTH, LL.D., Solicitor.

"Mr. Blyth's book will undoubtedly be very useful to readers of Snell."—*Law Times.*

"This is an admirable analysis of a good treatise; read with Snell, this little book will be found very profitable to the student."—*Law Journal.*

In 8vo, price 2*s.*, sewed,

QUESTIONS ON EQUITY.

FOR STUDENTS PREPARING FOR EXAMINATION.

FOUNDED ON THE NINTH EDITION OF

SNELL'S "PRINCIPLES OF EQUITY."

By W. T. WAITE,

BARRISTER-AT-LAW, HOLT SCHOLAR OF THE HONOURABLE SOCIETY OF GRAY'S INN.

Second Edition, in one volume, 8vo, price 18*s.*, cloth,

PRINCIPLES OF CONVEYANCING.

AN ELEMENTARY WORK FOR THE USE OF STUDENTS.

By HENRY C. DEANE,

OF LINCOLN'S INN, BARRISTER-AT-LAW, SOMETIME LECTURER TO THE INCORPORATED LAW SOCIETY OF THE UNITED KINGDOM.

"We hope to see this book, like Snell's Equity, a standard class-book in all Law Schools where English law is taught."—CANADA LAW JOURNAL.

"We like the work, it is well written and is an excellent student's book, and being only just published, it has the great advantage of having in it all the recent important enactments relating to conveyancing. It possesses also an excellent index."—*Law Students' Journal.*

"Will be found of great use to students entering upon the difficulties of Real Property Law. It has an unusually exhaustive index covering some fifty pages."—*Law Times.*

"In the parts which have been re-written, Mr. Deane has preserved the same pleasant style marked by simplicity and lucidity which distinguished his first edition. After 'Williams on Real Property,' there is no book which we should so strongly recommend to the student entering upon Real Property Law as Mr. Deane's 'Principles of Conveyancing,' and the high character which the first edition attained has been fully kept up in this second."—*Law Journal.*

Fourth Edition, in 8vo, price 10*s.*, cloth,

A SUMMARY OF THE

LAW & PRACTICE IN ADMIRALTY.

FOR THE USE OF STUDENTS.

By EUSTACE SMITH,

OF THE INNER TEMPLE; AUTHOR OF "A SUMMARY OF COMPANY LAW."

"The book is well arranged, and forms a good introduction to the subject."—*Solicitors' Journal.*

"It is, however, in our opinion, a well and carefully written little work, and should be in the hands of every student who is taking up Admiralty Law at the Final."—*Law Students' Journal.*

"Mr. Smith has a happy knack of compressing a large amount of useful matter in a small compass. The present work will doubtless be received with satisfaction equal to that with which his previous 'Summary' has been met."—*Oxford and Cambridge Undergraduates' Journal.*

Fourth Edition, in 8vo, price 8*s.*, cloth,

A SUMMARY OF THE

LAW AND PRACTICE IN THE ECCLESIASTICAL COURTS.

FOR THE USE OF STUDENTS.

By EUSTACE SMITH,

THE INNER TEMPLE; AUTHOR OF "A SUMMARY OF COMPANY LAW" AND "A SUMMARY OF THE LAW AND PRACTICE IN ADMIRALTY."

"His object has been, as he tells us in his preface, to give the student and general reader a fair outline of the scope and extent of ecclesiastical law, of the principles on which it is founded, of the Courts by which it is enforced, and the procedure by which these Courts are regulated. We think the book well fulfils its object. Its value is much enhanced by a profuse citation of authorities for the propositions contained in it."—*Bar Examination Journal.*

Fourth Edition, in 8vo, price 7*s.* 6*d.*, cloth,

AN EPITOME OF THE LAWS OF PROBATE AND DIVORCE.

FOR THE USE OF STUDENTS FOR HONOURS EXAMINATION.

By J. CARTER HARRISON, SOLICITOR.

"The work is considerably enlarged, and we think improved, and will be found of great assistance to students."—*Law Students' Journal.*

Eighth Edition. In one volume, 8vo, price 20*s.* cloth,

PRINCIPLES OF THE COMMON LAW.

INTENDED FOR THE USE OF STUDENTS AND THE PROFESSION.

EIGHTH EDITION.

BY JOHN INDERMAUR, SOLICITOR,

AUTHOR OF "A MANUAL OF THE PRACTICE OF THE SUPREME COURT," "EPITOMES OF LEADING CASES," AND OTHER WORKS.

"The student will find in Mr. Indermaur's book a safe and clear guide to the Principles of Common Law."—*Law Journal*, 1892.

"The present edition of this elementary treatise has been in general edited with praiseworthy care. The provisions of the statutes affecting the subjects discussed, which have been passed since the publication of the last edition, are clearly summarised, and the effect of the leading cases is generally very well given. In the difficult task of selecting and distinguishing principle from detail, Mr. Indermaur has been very successful; the leading principles are clearly brought out, and very judiciously illustrated."—*Solicitors' Journal.*

"The work is acknowledged to be one of the best written and most useful elementary works for Law Students that has been published."—*Law Times.*

"The praise which we were enabled to bestow upon Mr. Indermaur's very useful compilation on its first appearance has been justified by a demand for a second edition."—*Law Magazine.*

"We were able, four years ago, to praise the first edition of Mr. Indermaur's book as likely to be of use to students in acquiring the elements of the law of torts and contracts. The second edition maintains the character of the book."—*Law Journal.*

"Mr. Indermaur renders even law light reading. He not only possesses the faculty of judicious selection, but of lucid exposition and felicitous illustration. And while his works are all thus characterised, his 'Principles of the Common Law' especially displays those features. That it has already reached a second edition, testifies that our estimate of the work on its first appearance was not unduly favourable, highly as we then signified approval; nor needs it that we should add anything to that estimate in reference to the general scope and execution of the work. It only remains to say, that the present edition evinces that every care has been taken to insure thorough accuracy, while including all the modifications in the law that have taken place since the original publication; and that the references to the Irish decisions which have been now introduced are calculated to render the work of greater utility to practitioners and students, *both* English and Irish."—*Irish Law Times.*

"*This work, the author tells us in his Preface, is written mainly with a view to the examinations of the Incorporated Law Society; but we think it is likely to attain a wider usefulness. It seems, so far as we can judge from the parts we have examined, to be a careful and clear outline of the principles of the common law. It is very readable; and not only students, but many practitioners and the public might benefit by a perusal of its pages.*"—SOLICITORS' JOURNAL.

Seventh Edition, in 8vo, price 14*s.*, cloth,

A MANUAL OF THE PRACTICE OF THE SUPREME COURT OF JUDICATURE,

IN THE QUEEN'S BENCH AND CHANCERY DIVISIONS.

Seventh Edition.

Intended for the use of Students and the Profession.

By JOHN INDERMAUR, Solicitor.

"Mr. Indermaur has brought out a sixth edition of his excellent 'Manual of Practice' at a very opportune time, for he has been able to incorporate the effect of the new Rules of Court which came into force last November, the Trustee Act, 1893, and Rules, and the Supreme Court Fund Rules, 1893, as well as that of other Acts of earlier date. A very complete revision of the work has, of course, been necessary, and Mr. Indermaur, assisted by Mr. Thwaites, has effected this with his usual thoroughness and careful attention to details. The book is well known and valued by students, but practitioners also find it handy in many cases where reference to the bulkier 'White Book' is unnecessary."—*Law Times, February*, 1894.

"This well-known students' book may very well be consulted by practitioners, as it contains a considerable amount of reliable information on the practice of the Court. It is written so as to include the new Rules, and a supplemental note deals with the alterations made in Rule XI. by the Judges in January last. The praise which we gave to previous editions is quite due to the present issue."—*Law Journal, February*, 1894.

Eighth Edition, in 8vo, price 6*s.*, cloth,

AN EPITOME OF LEADING COMMON LAW CASES;

WITH SOME SHORT NOTES THEREON.

Chiefly intended as a Guide to "SMITH'S LEADING CASES." By JOHN INDERMAUR, Solicitor (Clifford's Inn Prizeman, Michaelmas Term, 1872).

"We have received the third edition of the 'Epitome of Leading Common Law Cases,' by Mr. Indermaur, Solicitor. The first edition of this work was published in February, 1873, the second in April, 1874; and now we have a third edition dated September, 1875. No better proof of the value of this book can be furnished than the fact that in less than three years it has reached a third edition."—*Law Journal.*

Eighth Edition, in 8vo, price 6*s.*, cloth,

AN EPITOME OF LEADING CONVEYANCING AND EQUITY CASES;

WITH SOME SHORT NOTES THEREON, FOR THE USE OF STUDENTS.

By JOHN INDERMAUR, Solicitor, Author of "An Epitome of Leading Common Law Cases."

"We have received the second edition of Mr. Indermaur's very useful Epitome of Leading Conveyancing and Equity Cases. The work is very well done."—*Law Times.*

"The Epitome well deserves the continued patronage of the class—Students—for whom it is especially intended. Mr. Indermaur will soon be known as the 'Students' Friend.'"—*Canada Law Journal.*

Sixth Edition, 8vo, price 6*s.*, cloth,

THE ARTICLED CLERK'S GUIDE TO AND SELF-PREPARATION FOR THE FINAL EXAMINATION.

Containing a Complete Course of Study, with Books to Read, List of Statutes, Cases, Test Questions, &c., and intended for the use of those Articled Clerks who read by themselves. By JOHN INDERMAUR, Solicitor.

"In this edition Mr. Indermaur extends his counsels to the whole period from the Intermediate examination to the Final. His advice is practical and sensible: and if the course of study he recommends is intelligently followed, the articled clerk will have laid in a store of legal knowledge more than sufficient to carry him through the Final Examination."—*Solicitors' Journal.*

Now ready, Fifth Edition, in 8vo, price 10*s.*, cloth,

THE ARTICLED CLERK'S GUIDE TO AND SELF-PREPARATION FOR THE INTERMEDIATE EXAMINATION,

As it now exists on Stephen's Commentaries. Containing a complete course of Study, with Statutes, Questions, and Advice. Also a complete Selected Digest of the whole of the Questions and Answers set at the Examinations on those parts of "Stephen" now examined on, embracing a period of fourteen and a half years (58 Examinations), inclusive of the Examination in April, 1894, &c. &c., and intended for the use of all Articled Clerks who have not yet passed the Intermediate Examination. By JOHN INDERMAUR, Author of "Principles of Common Law," and other works.

In 8vo, 1875, price 6*s.*, cloth,

THE STUDENTS' GUIDE TO THE JUDICATURE ACTS,

AND THE RULES THEREUNDER:

Being a book of Questions and Answers intended for the use of Law Students.

By JOHN INDERMAUR, Solicitor.

Fifth Edition, in crown 8vo, price 12*s.* 6*d.*, cloth,

AN EPITOME OF CONVEYANCING STATUTES,

EXTENDING FROM 13 EDW. I. TO THE END OF 55 & 56 VICTORIÆ. Fifth Edition, with Short Notes. By GEORGE NICHOLS MARCY, of Lincoln's Inn, Barrister-at-Law.

Second Edition, in 8vo,

A NEW LAW DICTIONARY,

AND INSTITUTE OF THE WHOLE LAW;

EMBRACING FRENCH AND LATIN TERMS AND REFERENCES TO THE AUTHORITIES, CASES, AND STATUTES.

SECOND EDITION, revised throughout, and considerably enlarged.

By ARCHIBALD BROWN,

M.A. EDIN. AND OXON., AND B.C.L. OXON., OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW; AUTHOR OF THE "LAW OF FIXTURES," "ANALYSIS OF SAVIGNY'S OBLIGATIONS IN ROMAN LAW," ETC.

Reviews of the Second Edition.

"*So far as we have been able to examine the work, it seems to have been most carefully and accurately executed, the present Edition, besides containing much new matter, having been thoroughly revised in consequence of the recent changes in the law; and we have no doubt whatever that it will be found extremely useful, not only to students and practitioners, but to public men, and men of letters.*"—IRISH LAW TIMES.

"*Mr. Brown has revised his Dictionary, and adapted it to the changes effected by the Judicature Acts, and it now constitutes a very useful work to put into the hands of any student or articled clerk, and a work which the practitioner will find of value for reference.*"—SOLICITORS' JOURNAL

"*It will prove a reliable guide to law students, and a handy book of reference for practitioners.*"—LAW TIMES.

In royal 8vo, price 5*s.*, cloth,

ANALYTICAL TABLES

OF

THE LAW OF REAL PROPERTY;

Drawn up chiefly from STEPHEN'S BLACKSTONE, with Notes.

By C. J. TARRING, of the Inner Temple, Barrister-at-Law.

CONTENTS.

"Great care and considerable skill have been shown in the compilation of these tables, which will be found of much service to students of the Law of Real Property."—*Law Times.*

Seventh Edition, in 8vo, price 20*s.*, cloth,

PRINCIPLES OF THE CRIMINAL LAW.

INTENDED AS A LUCID EXPOSITION OF THE SUBJECT FOR THE USE OF STUDENTS AND THE PROFESSION.

By SEYMOUR F. HARRIS, B.C.L., M.A. (Oxon.),

AUTHOR OF "A CONCISE DIGEST OF THE INSTITUTES OF GAIUS AND JUSTINIAN."

SEVENTH EDITION.

By C. L. ATTENBOROUGH, of the Inner Temple, Barrister-at-Law.

REVIEWS.

"Messrs. Stevens & Haynes have just issued the Seventh Edition of their well known text-book, 'Harris's Principles of the Criminal Law.' For the present edition Mr. Charles L. Attenborough, of the Inner Temple, Barrister-at-Law, is responsible. He has brought the work up to date, and ensured for it a further career of usefulness as the leading student's text-book upon the Criminal Law."—*Law Times.*

"This work is pretty well known as one designed for the student who is preparing for examination, and for the help of young practitioners. Among articled clerks it has long enjoyed a popularity which is not likely to be interfered with. . . . We have been carefully through the new edition and can cordially commend it."—*Law Student's Journal.*

"The book must be good, and must meet a demand, and Harris's Criminal Law remains as it has always been, an excellent work for obtaining that kind of theoretical knowledge of the criminal law which is so useful at the University Examinations of Oxford and Cambridge."—*Law Notes.*

"The characteristic of the present Edition is the restoration to the book of the character of 'a concise exposition' proclaimed by the title-page. Mr. Attenborough has carefully pruned away the excrescences which had arisen in successive editions, and has improved the work both as regards terseness and clearness of exposition. In both respects it is now an excellent student's book. The text is very well broken up into headings and paragraphs, with short marginal notes—the importance of which, for the convenience of the student, is too often overlooked."—*Solicitors' Journal.*

"*The favourable opinion we expressed of the first edition of this work appears to have been justified by the reception it has met with. Looking through this new Edition, we see no reason to modify the praise we bestowed on the former Edition. The recent cases have been added and the provisions of the Summary Jurisdiction Act are noticed in the chapter relating to Summary Convictions. The book is one of the best manuals of Criminal Law for the student.*"—Solicitors' Journal.

"*There is no lack of Works on Criminal Law, but there was room for such a useful handbook of Principles as Mr. Seymour Harris has supplied. Accustomed, by his previous labours, to the task of analysing the law, Mr. Harris has brought to bear upon his present work qualifications well adapted to secure the successful accomplishment of the object which he had set before him. That object is not an ambitious one, for it does not pretend to soar above utility to the young practitioner and the student. For both these classes, and for the yet wider class who may require a book of reference on the subject, Mr. Harris has produced a clear and convenient Epitome of the Law.*"—Law Magazine and Review.

"This work purports to contain 'a concise exposition of the nature of crime, the various offences punishable by the English law, the law of criminal procedure, and the law of summary convictions,' with tables of offences, punishments, and statutes. The work is divided into four books. Book I. treats of crime, its divisions and essentials; of persons capable of committing crimes; and of principals and accessories. Book II. deals with offences of a public nature; offences against private persons; and offences against the property of individuals. Each crime is discussed in its turn, with as much brevity as could well be used consistently with a proper explanation of the legal characteristics of the several offences. Book III. explains criminal procedure, including the jurisdiction of Courts, and the various steps in the apprehension and trial of criminals from arrest to punishment. This part of the work is extremely well done, the description of the trial being excellent, and thoroughly calculated to impress the mind of the uninitiated. Book IV. contains a short sketch of 'summary convictions before magistrates out of quarter sessions.' The table of offences at the end of the volume is most useful, and there is a very full index. Altogether we must congratulate Mr. Harris on his adventure."—*Law Journal.*

Second Edition, in crown 8vo, price 5*s.* 6*d.*, cloth,

THE STUDENTS' GUIDE TO BANKRUPTCY;

Being a Complete Digest of the Law of Bankruptcy in the shape of Questions and Answers, and comprising all Questions asked at the Solicitors' Final Examinations in Bankruptcy since the Bankruptcy Act, 1883, and all important Decisions since that Act. By JOHN INDERMAUR, Solicitor, Author of "Principles of Common Law," &c. &c.

In 12mo, price 5*s.* 6*d.*, cloth,

A CONCISE TREATISE ON THE LAW OF BILLS OF SALE,

FOR THE USE OF LAWYERS, LAW STUDENTS, AND THE PUBLIC.

Embracing the Acts of 1878 and 1882. Part I.—Of Bills of Sale generally. Part II.—Of the Execution, Attestation, and Registration of Bills of Sale and satisfaction thereof. Part III.—Of the Effects of Bills of Sale as against Creditors. Part IV.—Of Seizing under, and Enforcing Bills of Sale. Appendix, Forms, Acts, &c. By JOHN INDERMAUR, Solicitor.

"The object of the book is thoroughly practical. Those who want to be told exactly what to do and where to go when they are registering a bill of sale will find the necessary information in this little book."—*Law Journal.*

Second Edition, in 8vo, price 4*s.*, cloth,

A COLLECTION OF LATIN MAXIMS & PHRASES.

LITERALLY TRANSLATED.

INTENDED FOR THE USE OF STUDENTS FOR ALL LEGAL EXAMINATIONS.

Second Edition, by J. N. COTTERELL, Solicitor.

"The book seems admirably adapted as a book of reference for students who come across a Latin maxim in their reading."—*Law Journal.*

In one volume, 8vo, price 9*s.*, cloth,

LEADING STATUTES SUMMARISED,

FOR THE USE OF STUDENTS.

By ERNEST C. THOMAS,

BACON SCHOLAR OF THE HON. SOCIETY OF GRAY'S INN, LATE SCHOLAR OF TRINITY COLLEGE, OXFORD; AUTHOR OF "LEADING CASES IN CONSTITUTIONAL LAW BRIEFLY STATED."

Second Edition, in 8vo, enlarged, price 6*s.*, cloth,

LEADING CASES IN CONSTITUTIONAL LAW

BRIEFLY STATED, WITH INTRODUCTION AND NOTES.

By ERNEST C. THOMAS,

BACON SCHOLAR OF THE HON. SOCIETY OF GRAY'S INN, LATE SCHOLAR OF TRINITY COLLEGE, OXFORD.

"Mr. E. C. Thomas has put together in a slim octavo a digest of the principal cases illustrating Constitutional Law, that is to say, all questions as to the rights or authority of the Crown or persons under it, as regards not merely the constitution and structure given to the governing body, but also the mode in which the sovereign power is to be exercised. In an introductory essay Mr. Thomas gives a very clear and intelligent survey of the general functions of the Executive, and the principles by which they are regulated; and then follows a summary of leading cases."—*Saturday Review.*

"Mr. Thomas gives a sensible introduction and a brief epitome of the familiar leading cases."—*Law Times.*

In 8vo, price 8*s.*, cloth,

AN EPITOME OF HINDU LAW CASES. With

Short Notes thereon. And Introductory Chapters on Sources of Law, Marriage, Adoption, Partition, and Succession. By WILLIAM M. P. COGHLAN, Bombay Civil Service, late Judge and Sessions Judge of Tanna.

Second Edition, in crown 8vo, price 12*s.* 6*d.*, cloth,

THE BANKRUPTCY ACT, 1883,

WITH NOTES OF ALL THE CASES DECIDED UNDER THE ACT;

THE CONSOLIDATED RULES AND FORMS, 1886; THE DEBTORS ACT, 1869, SO FAR AS APPLICABLE TO BANKRUPTCY MATTERS, WITH RULES AND FORMS THEREUNDER; THE BILLS OF SALE ACTS, 1878 AND 1882;

Board of Trade Circulars and Forms, and List of Official Receivers; Scale of Costs, Fees, and Percentages, 1886; Orders of the Bankruptcy Judge of the High Court; and a Copious Index.

BY WILLIAM HAZLITT, ESQ., SENIOR REGISTRAR IN BANKRUPTCY, AND RICHARD RINGWOOD, M.A., OF THE MIDDLE TEMPLE, ESQ., BARRISTER-AT-LAW.

Second Edition, by R. RINGWOOD, M.A., Barrister-at-Law.

"This is a very handy edition of the Act and Rules. . . . . The cross references and marginal references to corresponding provisions of the Act of 1869 are exceedingly useful. . . . . There is a very full index, and the book is admirably printed."—*Solicitors' Journal.*

Part I., price 7*s.* 6*d.*, sewed,

LORD WESTBURY'S DECISIONS IN THE EUROPEAN ARBITRATION.

Reported by FRANCIS S. REILLY, of Lincoln's Inn, Barrister-at-Law.

Parts I., II., and III., price 25*s.*, sewed,

LORD CAIRNS'S DECISIONS IN THE ALBERT ARBITRATION.

Reported by FRANCIS S. REILLY, of Lincoln's Inn, Barrister-at-Law.

Second Edition, in royal 8vo, price 30*s.*, cloth,

A TREATISE ON

THE STATUTES OF ELIZABETH AGAINST FRAUDULENT CONVEYANCES.

THE BILLS OF SALE ACTS 1878 AND 1882 AND THE LAW OF VOLUNTARY DISPOSITIONS OF PROPERTY.

BY THE LATE H. W. MAY, B.A. (Ch. Ch. Oxford).

Second Edition, thoroughly revised and enlarged, by S. WORTHINGTON WORTHINGTON, of the Inner Temple, Barrister-at-Law; Editor of the "Married Women's Property Acts," 5th edition, by the late J. R. GRIFFITH.

"In conclusion, we can heartily recommend this book to our readers, not only to those who are in large practice, and who merely want a classified list of cases, but to those who have both the desire and the leisure to enter upon a systematic study of our law."—*Solicitors' Journal.*

"As Mr. Worthington points out, since Mr. May wrote, the 'Bills of Sale Acts' of 1878 and 1882 have been passed; the 'Married Women's Property Act, 1882' (making settlements by married women void as against creditors in cases in which similar settlements by a man would be void), and the 'Bankruptcy Act, 1883.' These Acts and the decisions upon them have been handled by Mr. Worthington in a manner which shows that he is master of his subject, and not a slavish copyist of sections and head-notes, which is a vicious propensity of many modern compilers of text-books. His Table of Cases (with reference to all the reports), is admirable, and his Index most exhaustive."—*Law Times.*

"The results of the authorities appear to be given well and tersely, and the treatise will, we think, be found a convenient and trustworthy book of reference."—*Law Journal.*

"Mr. Worthington's work appears to have been conscientious and exhaustive."—*Saturday Review.*

"Examining Mr. May's book, we find it constructed with an intelligence and precision which render it entirely worthy of being accepted as a guide in this confessedly difficult subject. The subject is an involved one, but with clean and clear handling it is here presented as clearly as it could be. . . . On the whole, he has produced a very useful book of an exceptionally scientific character."—*Solicitors' Journal.*

"The subject and the work are both very good. The former is well chosen, new, and interesting; the latter has the quality which always distinguishes original research from borrowed labours."—*American Law Review.*

"We are happy to welcome his (Mr. May's) work as an addition to the, we regret to say, brief catalogue of law books conscientiously executed. We can corroborate his own description of his labours. 'that no pains have been spared to make the book as concise and practical as possible, without doing so at the expense of perspicuity, or by the omission of any important points.'"—*Law Times.*

In one volume, medium 8vo, price 38*s.*, cloth ; or in half-roxburgh, 42*s.*,

A HISTORY OF THE FORESHORE

AND THE LAW RELATING THERETO.

WITH A HITHERTO UNPUBLISHED TREATISE BY LORD HALE, LORD HALE'S "DE JURE MARIS," AND THE THIRD EDITION OF HALL'S ESSAY ON THE

RIGHTS OF THE CROWN IN THE SEA-SHORE.

WITH NOTES, AND AN APPENDIX RELATING TO FISHERIES.

BY STUART A. MOORE, F.S.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"This work is nominally a third edition of the late Mr. Hall's essay on the rights of the Crown in the Sea-shore, but in reality is an absolutely new production, for out of some 900 odd pages Hall's essay takes up but 227. Mr. Moore has written a book of great importance, which should mark an epoch in the history of the rights of the Crown and the subject in the *litus maris*, or foreshore of the kingdom. Hall's treatise (with Loveland's notes) is set out with fresh notes by the present editor, who is anything but kindly disposed towards his author, for his notes are nothing but a series of exposures of what he deems to be Hall's errors and misrepresentations. Mr. Moore admits his book to be a brief for the opposite side of the contention supported by Hall, and a more vigorous and argumentative treatise we have scarcely ever seen. Its arguments are clearly and broadly disclosed, and supported by a wealth of facts and cases which show the research of the learned author to have been most full and elaborate. . . . There is no doubt that this is an important work, which must have a considerable influence on that branch of the law with which it deals. That law is contained in ancient and most inaccessible records ; these have now been brought to light, and it may well be that important results to the subject may flow therefrom. The Profession, not to say the general public, owe the learned author a deep debt of gratitude for providing ready to hand such a wealth of materials for founding and building up arguments. Mr. Stuart Moore has written a work which must, unless his contentions are utterly unfounded, at once become the standard text-book on the law of the Sea-shore."—*Law Times*, Dec. 1st.

"Mr. Stuart Moore in his valuable work on the Foreshore."—*The Times.*

"Mr. Stuart Moore's work on the title of the Crown to the land around the coast of England lying between the high and low water mark is something more than an ordinary law book. It is a history, and a very interesting one, of such land and the rights exercised over it from the earliest times to the present day ; and a careful study of the facts contained in the book and of the arguments brought forward can scarcely fail to convince the reader of the inaccuracy of the theory, now so constantly put forward by the Crown, that without the existence of special evidence to the contrary, the land which adjoins riparian property, and which is covered at high tide, belongs to the Crown and not to the owner of the adjoining manor. The list which Mr. Moore gives of places where the question of foreshore has been already raised, and of those as to which evidence on the subject exists amongst the public records, is valuable, though by no means exhaustive ; and the book should certainly find a place in the library of the lord of every riparian manor."—*Morning Post.*

In one volume, 8vo, price 12*s.*, cloth,

A TREATISE ON THE LAW RELATING TO THE

POLLUTION AND OBSTRUCTION OF WATER COURSES ;

TOGETHER WITH A BRIEF SUMMARY OF THE VARIOUS SOURCES OF RIVERS POLLUTION.

BY CLEMENT HIGGINS, M.A., F.C.S.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"As a compendium of the law upon a special and rather intricate subject, this treatise cannot but prove of great practical value, and more especially to those who have to advise upon the institution of proceedings under the Rivers Pollution Prevention Act, 1876, or to adjudicate upon those proceedings when brought."—*Irish Law Times.*

"We can recommend Mr. Higgins' Manual as the best guide we possess."—*Public Health.*

"County Court Judges, Sanitary Authorities, and Riparian Owners will find in Mr. Higgins' Treatise a valuable aid in obtaining a clear notion of the Law on the Subject. Mr. Higgins has accomplished a work for which he will readily be recognised as having special fitness on account of his practical acquaintance both with the scientific and the legal aspects of his subject."—*Law Magazine and Review.*

"The volume is very carefully arranged throughout, and will prove of great utility both to miners and to owners of land on the banks of rivers."—*The Mining Journal.*

"Mr. Higgins writes tersely and clearly, while his facts are so well arranged that it is a pleasure to refer to his book for information ; and altogether the work is one which will be found very useful by all interested in the subject to which it relates."—*Engineer.*

"A compact and convenient manual of the law on the subject to which it relates."—*Solicitors' Journal.*

In 8vo, FIFTH EDITION, price 28*s.*, cloth.

MAYNE'S TREATISE
ON
THE LAW OF DAMAGES.

FIFTH EDITION.

REVISED AND PARTLY REWRITTEN.

BY

JOHN D. MAYNE,
OF THE INNER TEMPLE, BARRISTER-AT-LAW;
AND
HIS HONOR JUDGE LUMLEY SMITH, Q.C.

"'Mayne on Damages' has now become almost a classic, and it is one of the books which we cannot afford to have up to date. We are therefore pleased to have a new Edition, and one so well written as that before us. With the authors we regret the increasing size of the volume, but bulk in such a case is better than incompleteness. Every lawyer in practice should have this book, full as it is of practical learning on all branches of the Common Law. The work is unique, and this Edition, like its predecessors, is indispensable."—*Law Journal*, April, 1894.

"Few books have been better kept up to the current law than this treatise. The earlier part of the book was remodelled in the last edition, and in the present edition the chapter on Penalties and Liquidated Damages has been rewritten, no doubt in consequence of, or with regard to, the elaborate and exhaustive judgment of the late Master of the Rolls in *Wallis* v. *Smith* (31 W. R. 214; L. R. 21 Ch. D. 243). The treatment of the subject by the authors is admirably clear and concise. Upon the point involved in *Wallis* v. *Smith* they say: 'The result is that an agreement with various covenants of different importance is not to be governed by any inflexible rule peculiar to itself, but is to be dealt with as coming under the general rule, that the intention of the parties themselves is to be considered. If they have said that in the case of any breach a fixed sum is to be paid, then they will be kept to their agreement, unless it would lead to such an absurdity or injustice that it must be assumed that they did not mean what they said.' This is a very fair summary of the judgments in *Wallis* v. *Smith*, especially of that of Lord Justice Cotton; and it supplies the nearest approach which can be given at present to a rule for practical guidance. We can heartily commend this as a carefully edited edition of a thoroughly good book."—*Solicitors' Journal.*

"*During the twenty-two years which have elapsed since the publication of this well-known work, its reputation has been steadily growing, and it has long since become the recognised authority on the important subject of which it treats.*"—LAW MAGAZINE AND REVIEW.

"This edition of what has become a standard work has the advantage of appearing under the supervision of the original author as well as of Mr. Lumley Smith, the editor of the second edition. The result is most satisfactory. Mr. Lumley Smith's edition was ably and conscientiously prepared, and we are glad to find that the reader still enjoys the benefit of his accuracy and learning. At the same time the book has doubtless been improved by the reappearance of its author as co-editor. The earlier part, indeed, has been to a considerable extent entirely rewritten.

"Mr. Mayne's remarks on damages in actions of tort are brief. We agree with him that in such actions the courts are governed by far looser principles than in contracts; indeed, sometimes it is impossible to say they are governed by any principles at all. In actions for injuries to the person or reputation, for example, a judge cannot do more than give a general direction to the jury to give what the facts proved in their judgment required And, according to the better opinion, they may give damages 'for example's sake,' and mulct a rich man more heavily than a poor one. In actions for injuries to property, however, 'vindictive' or 'exemplary' damages cannot, except in very rare cases, be awarded, but must be limited, as in contract, to the actual harm sustained.

"It to needless to comment upon the arrangement of the subjects in this edition, in which no alteration has been made. The editors modestly express a hope that all the English as well as the principal Irish decisions up to the date have been included, and we believe from our own examination that the hope is well founded. We may regret that, warned by the growing bulk of the book, the editors have not included any fresh American cases, but we feel that the omission was unavoidable. We should add that the whole work has been thoroughly revised."—*Solicitors' Journal.*

"*This text-book is so well known, not only as the highest authority on the subject treated of but as one of the best text-books ever written, that it would be idle for us to speak of it in the words of commendation that it deserves. It is work that no practising lawyer can do without.*"—CANADA LAW JOURNAL.

In crown 8vo, price 4*s.* 6*d.*, cloth,

ABSTRACT DRAWING. Containing Instructions on the Drawing of Abstracts of Title, and an Illustrative Appendix. By C. E. SCOTT, Solicitor.

"This little book is intended for the assistance of those who have the framing of abstracts of title entrusted to their care. It contains a number of useful rules, and an illustrative appendix."—*Law Times.*

"A handy book for all articled clerks."—*Law Students' Journal.*

"Solicitors who have articled clerks would save themselves much trouble if they furnished their clerks with a copy of this little book before putting them on to draft an abstract of a heap of title deeds."—*Law Notes.*

"The book ought to be perused by all law students and articled clerks."—*Red Tape.*

Second Edition, in crown 8vo, price 7*s.*, cloth,

THE LAW RELATING TO CLUBS.

BY THE LATE JOHN WERTHEIMER, BARRISTER-AT-LAW.

Second Edition, by A. W. CHASTER, Barrister-at-Law.

"A convenient handbook, drawn up with great judgment and perspicuity."—*Morning Post.*

"Both useful and interesting to those interested in club management."—*Law Times.*

"Mr. Wertheimer's history of the cases is complete and well arranged."—*Saturday Review.*

"This is a very neat little book on an interesting subject. The law is accurately and well expressed."—*Law Journal.*

"This is a very handy and complete little work. This excellent little treatise should lie on the table of every club."—*Pump Court.*

In 8vo, price 2*s.*, sewed,

TABLE of the FOREIGN MERCANTILE LAWS and CODES

in Force in the Principal States of EUROPE and AMERICA. By CHARLES LYON-CAEN, Professeur agrégé à la Faculté de Droit de Paris; Professeur à l'Ecole libre des Sciences politiques. Translated by NAPOLEON ARGLES, Solicitor, Paris.

In 8vo, price 1*s.*, sewed,

A GUIDE TO THE FRENCH LAWS OF 1889, ON NATIONALITY AND MILITARY SERVICE, as affecting British Subjects. By A. PAVITT, Solicitor, Paris.

In one volume, demy 8vo, price 10*s.* 6*d.*, cloth,

PRINCIPLES OF THE LAW OF STOPPAGE IN TRANSITU, RETENTION, and DELIVERY. By JOHN HOUSTON, of the Middle Temple, Barrister-at-Law.

In 8vo, price 10*s.*, cloth,

THE TRIAL OF ADELAIDE BARTLETT FOR MURDER; Complete and Revised Report. Edited by EDWARD BEAL, B.A., of the Middle Temple, Barrister-at-Law. With a Preface by EDWARD CLARKE, Q.C., M.P.

In 8vo, price 10*s.* 6*d.*, cloth,

A REPORT OF THE CASE OF

THE QUEEN *v.* GURNEY AND OTHERS,

In the Court of Queen's Bench before the Lord Chief Justice COCKBURN. With Introduction, containing History of the Case, and Examination of the Cases at Law and Equity applicable to it. By W. F. FINLASON, Barrister-at-Law.

In royal 8vo, price 10*s.* 6*d.*, cloth,

THE PRACTICE OF EQUITY BY WAY OF REVIVOR AND SUPPLEMENT.

With Forms of Orders and Appendix of Bills. By LOFTUS LEIGH PEMBERTON, of the Chancery Registrar's Office.

In 8vo, price 12*s.* 6*d.*, cloth,

THE ANNUAL DIGEST OF MERCANTILE CASES FOR THE YEARS 1885 AND 1886.

BEING A DIGEST OF THE DECISIONS OF THE ENGLISH, SCOTCH AND IRISH COURTS ON MATTERS RELATING TO COMMERCE.

BY JAMES A. DUNCAN, M.A., LL.B., Trin. Coll., Camb.,
AND OF THE INNER TEMPLE, BARRISTER-AT-LAW.

In 8vo, 1878, price 6*s.*, cloth,

THE

LAW RELATING TO CHARITIES,

ESPECIALLY WITH REFERENCE TO THE VALIDITY AND CONSTRUCTION OF

CHARITABLE BEQUESTS AND CONVEYANCES.

BY FERDINAND M. WHITEFORD, of Lincoln's Inn, Barrister-at-Law.

Vols. I., II., III., IV., and V., Part I., price 5*l.* 7*s.*

REPORTS OF THE DECISIONS OF THE

JUDGES FOR THE TRIAL OF ELECTION PETITIONS

IN ENGLAND AND IRELAND.

PURSUANT TO THE PARLIAMENTARY ELECTIONS ACT, 1868.

BY EDWARD LOUGHLIN O'MALLEY AND HENRY HARDCASTLE.

*** *Vol. IV. Part III. and all after are Edited by* J. S. SANDARS *and* A. P. P. KEEP, *Barristers-at-Law.*

In 8vo, price 12*s.*, cloth,

THE LAW OF FIXTURES, in the principal relation of Landlord and Tenant, and in all other or general relations. Fourth Edition. By ARCHIBALD BROWN, M.A. Edin. and Oxon., and B.C.L. Oxon., of the Middle Temple, Barrister-at-Law.

In one volume, 8vo, price 28*s.*, cloth,

THE LAW RELATING TO PUBLIC WORSHIP;

With special reference to Matters of Ritual and Ornamentation, and the Means of Securing the Due Observance thereof, and containing in extenso, with Notes and References, The Public Worship Regulation Act, 1874; The Church Discipline Act; the various Acts of Uniformity; the Liturgies of 1549, 1552, and 1559, compared with the Present Rubric; the Canons; the Articles; and the Injunctions, Advertisements, and other Original Documents of Legal Authority. By SEWARD BRICE, LL.D., of the Inner Temple, Barrister-at-Law.

Stevens and Haynes' Series of Reprints of the Early Reporters.

SIR BARTHOLOMEW SHOWER'S PARLIAMENTARY CASES.

In 8vo, 1876, price 4*l.* 4*s.*, best calf binding,

SHOWER'S CASES IN PARLIAMENT.

RESOLVED AND ADJUDGED UPON PETITIONS & WRITS OF ERROR.

FOURTH EDITION,

CONTAINING ADDITIONAL CASES NOT HITHERTO REPORTED.

REVISED AND EDITED BY

RICHARD LOVELAND LOVELAND,

OF THE INNER TEMPLE, BARRISTER-AT-LAW; EDITOR OF "KELYNG'S CROWN CASES," AND "HALL'S ESSAY ON THE RIGHTS OF THE CROWN IN THE SEASHORE."

"Messrs. STEVENS & HAYNES, the successful publishers of the Reprints of Bellewe, Cooke, Cunningham, Brookes's New Cases, Choyce Cases in Chancery, William Kelynge and Kelyng's Crown Cases, determined to issue a new or fourth Edition of Shower's Cases in Parliament.

"The volume, although beautifully printed on old-fashioned Paper, in old-fashioned type, instead of being in the quarto is in the more convenient octavo form, and contains several additional cases not to be found in any of the previous editions of the work.

"These are all cases of importance, worthy of being ushered into the light of the world by enterprising publishers.

"Shower's Cases are models for reporters, even in our day. The statements of the case, the arguments of counsel, and the opinions of the Judges, are all clearly and ably given.

"This new edition with an old face of these valuable reports, under the able editorship of R. L. Loveland, Esq., should, in the language of the advertisement, 'be welcomed by the profession, as well as enable the custodians of public libraries to complete or add to their series of English Law Reports.'"—*Canada Law Journal.*

BELLEWE'S CASES, T. RICHARD II.

In 8vo, 1869, price 3*l.* 3*s.*, bound in calf antique,

LES ANS DU ROY RICHARD LE SECOND.

Collect' ensembl' hors les abridgments de Statham, Fitzherbert et Brooke. Per RICHARD BELLEWE, de Lincolns Inne. 1585. Reprinted from the Original Edition.

"No public library in the world, where English law finds a place, should be without a copy of this edition of Bellewe."—*Canada Law Journal.*

"We have here a *fac-simile* edition of Bellewe, and it is really the most beautiful and admirable reprint that has appeared at any time. It is a perfect gem of antique printing, and forms a most interesting monument of our early legal history. It belongs to the same class of works as the Year Book of Edward I. and other similar works which have been printed in our own time under the auspices of the Master of the Rolls; but is far superior to any of them, and is in this respect highly creditable to the spirit and enterprise of private publishers. The work is an important link in our legal history; there are no year books of the reign of Richard II., and Bellewe supplied the only substitute by carefully extracting and collecting all the cases he could find, and he did it in the most convenient form—that of alphabetical arrangement in the order of subjects, so that the work is a digest as well as a book of law reports. It is in fact a collection of cases of the reign of Richard II., arranged according to their subjects in alphabetical order. It is therefore one of the most intelligible and interesting legal memorials of the Middle Ages."—*Law Times.*

CUNNINGHAM'S REPORTS.

In 8vo, 1871, price 3*l.* 3*s.*, calf antique,

CUNNINGHAM'S (T.) Reports in K. B., 7 to 10 Geo. II.; to which is prefixed a Proposal for rendering the Laws of England clear and certain, humbly offered to the Consideration of both Houses of Parliament. Third edition, with numerous Corrections. By THOMAS TOWNSEND BUCKNILL, Barrister-at-Law.

"The instructive chapter which precedes the cases, entitled 'A proposal for rendering the Laws of England clear and certain,' gives the volume a degree of peculiar interest, independent of the value of many of the reported cases. That chapter begins with words which ought, for the information of every people, to be printed in letters of gold. They are as follows: 'Nothing conduces more to the peace and prosperity of every nation than good laws and the due execution of them.' The history of the civil law is then rapidly traced. Next a history is given of English Reporters, beginning with the reporters of the Year Books from 1 Edw. III. to 12 Hen. VIII.—being near 200 years—and afterwards to the time of the author."—*Canada Law Journal.*

Stevens and Haynes' Series of Reprints of the Early Reporters.

CHOYCE CASES IN CHANCERY.

In 8vo, 1870, price 2*l.* 2*s.*, calf antique,

THE PRACTICE OF THE HIGH COURT OF CHANCERY.

With the Nature of the several Offices belonging to that Court. And the Reports of many Cases wherein Relief hath been there had, and where denyed.

"This volume, in paper, type, and binding (like 'Bellewe's Cases') is a fac-simile of the antique edition. All who buy the one should buy the other."—*Canada Law Journal.*

In 8vo, 1872, price 3*l.* 3*s.*, calf antique,

SIR G. COOKE'S COMMON PLEAS REPORTS

IN THE REIGNS OF QUEEN ANNE, AND KINGS GEORGE I. AND II.

The Third Edition, with Additional Cases and References contained in the Notes taken from L. C. J. EYRE's MSS. by Mr. Justice NARES, edited by THOMAS TOWNSEND BUCKNILL, of the Inner Temple, Barrister-at-Law.

"Law books never can die or remain long dead so long as Stevens and Haynes are willing to continue them or revive them when dead. It is certainly surprising to see with what facial accuracy an old volume of Reports may be produced by these modern publishers, whose good taste is only equalled by their enterprise."—*Canada Law Journal.*

BROOKE'S NEW CASES WITH MARCH'S TRANSLATION.

In 8vo, 1873, price 4*l.* 4*s.*, calf antique,

BROOKE'S (Sir Robert) New Cases in the time of Henry VIII., Edward VI., and Queen Mary, collected out of BROOKE'S Abridgement, and arranged under years, with a table, together with MARCH'S (John) *Translation of* BROOKE'S New Cases in the time of Henry VIII., Edward VI., and Queen Mary, collected out of BROOKE'S Abridgement, and reduced alphabetically under their proper heads and titles, with a table of the principal matters. In one handsome volume. 8vo. 1873.

"Both the original and the translation having long been very scarce, and the mispaging and other errors in March's translation making a new and corrected edition peculiarly desirable, Messrs. Stevens and Haynes have reprinted the two books in one volume uniform with the preceding volumes of the series of Early Reports."—*Canada Law Journal.*

KELYNGE'S (W.) REPORTS.

In 8vo, 1873, price 4*l.* 4*s.*, calf antique,

KELYNGE'S (William) Reports of Cases in Chancery, the King's Bench, &c., from the 3rd to the 9th year of his late Majesty King George II., during which time Lord King was Chancellor, and the Lords Raymond and Hardwicke were Chief Justices of England. To which are added, seventy New Cases not in the First Edition. Third Edition. In one handsome volume. 8vo. 1873.

KELYNG'S (SIR JOHN) CROWN CASES.

In 8vo, 1873, price 4*l.* 4*s.*, calf antique,

KELYNG'S (Sir J.) Reports of Divers Cases in Pleas of the Crown in the Reign of King Charles II., with Directions to Justices of the Peace, and others; to which are added, Three Modern Cases, viz., Armstrong and Lisle, the King and Plummer, the Queen and Mawgridge. Third Edition, *containing several additional Cases never before printed*, together with a TREATISE UPON THE LAW AND PROCEEDINGS IN CASES OF HIGH TREASON, first published in 1793. The whole carefully revised and edited by RICHARD LOVELAND LOVELAND, of the Inner Temple, Barrister-at-Law.

"We look upon this volume as one of the most important and valuable of the unique reprints of Messrs. Stevens and Haynes. Little do we know of the mines of legal wealth that lie buried in the old law books. But a careful examination, either of the reports or of the treatise embodied in the volume now before us, will give the reader some idea of the good service rendered by Messrs. Stevens and Haynes to the profession. . . . Should occasion arise, the Crown prosecutor, as well as counsel for the prisoner, will find in this volume a complete *vade mecum* of the law of high treason and proceedings in relation thereto."—*Canada Law Journal.*

Second Edition, in 8vo, price 26*s.*, cloth,

A CONCISE TREATISE ON

PRIVATE INTERNATIONAL JURISPRUDENCE,

BASED ON THE DECISIONS IN THE ENGLISH COURTS.

By JOHN ALDERSON FOOTE,

OF LINCOLN'S INN, BARRISTER-AT-LAW; CHANCELLOR'S LEGAL MEDALLIST AND SENIOR WHEWELL SCHOLAR OF INTERNATIONAL LAW, CAMBRIDGE UNIVERSITY, 1873; SENIOR STUDENT IN JURISPRUDENCE AND ROMAN LAW, INNS OF COURT EXAMINATION, HILARY TERM, 1874.

"This work seems to us likely to prove of considerable use to all English lawyers who have to deal with questions of private international law. Since the publication of Mr. Westlake's valuable treatise, twenty years ago, the judicial decisions of English courts bearing upon different parts of this subject have greatly increased in number, and it is full time that these decisions should be examined, and that the conclusions to be deduced from them should be systematically set forth in a treatise. Moreover, Mr. Foote has done this well."—*Solicitors' Journal.*

"Mr. Foote has done his work very well, and the book will be useful to all who have to deal with the class of cases in which English law alone is not sufficient to settle the question."—*Saturday Review*, March 8, 1879.

"The author's object has been to reduce into order the mass of materials already accumulated in the shape of explanation and actual decision on the interesting matter of which he treats; and to construct a framework of private international law, not from the *dicta* of jurists so much as from judicial decisions in English Courts which have superseded them. And it is here, in compiling and arranging in a concise form this valuable material, that Mr. Foote's wide range of knowledge and legal acumen bear such good fruit. As a guide and assistant to the student of international law, the whole treatise will be invaluable: while a table of cases and a general index will enable him to find what he wants without trouble."—*Standard.*

"The recent decisions on points of international law (and there have been a large number since Westlake's publication) have been well stated. So far as we have observed, no case of any importance has been omitted, and the leading cases have been fully analysed. The author does not hesitate to criticise the grounds of a decision when these appear to him to conflict with the proper rule of law. Most of his criticisms seem to us very just. . . . . On the whole, we can recommend Mr. Foote's treatise as a useful addition to our text-books, and we expect it will rapidly find its way into the hands of practising lawyers."—*The Journal of Jurisprudence and Scottish Law Magazine.*

"Mr. Foote has evidently borne closely in mind the needs of Students of Jurisprudence as well as those of the Practitioners. For both, the fact that his work is almost entirely one of Case-law will commend it as one useful alike in Chambers and in Court."—*Law Magazine and Review.*

"Mr. Foote's book will be useful to the student. . . . . One of the best points of Mr. Foote's book is the 'Continuous Summary,' which occupies about thirty pages, and is divided into four parts—Persons, Property, Acts, and Procedure. Mr. Foote remarks that these summaries are not in any way intended as an attempt at codification. However that may be, they are a digest which reflects high credit on the author's assiduity and capacity. They are 'meant merely to guide the student;' but they will do much more than guide him. They will enable him to get such a grasp of the subject as will render the reading of the text easy and fruitful."—*Law Journal.*

"This book is well adapted to be used both as a text-book for students and a book of reference for practising barristers."—*Bar Examination Journal.*

"This is a book which supplies the want which has long been felt for a really good modern treatise on Private International Law adapted to the every-day requirements of the English Practitioner. The whole volume, although designed for the use of the practitioner, is so moderate in size—an octavo of 500 pages only—and the arrangement and development of the subject so well conceived and executed, that it will amply repay perusal by those whose immediate object may be not the actual decisions of a knotty point but the satisfactory disposal of an examination paper."—*Oxford and Cambridge Undergraduates' Journal.*

"Since the publication, some twenty years ago, of Mr. Westlake's Trentise, Mr. Foote's book is, in our opinion, the best work on private international law which has appeared in the English language. . . . . The work is executed with much ability, and will doubtless be found of great value by all persons who have to consider questions on private International law."—*Athenæum.*

THE

Law Magazine and Review,

AND

QUARTERLY DIGEST OF ALL REPORTED CASES.

Price FIVE SHILLINGS each Number.

No. CCXVIII. (Vol. 1, No. I. of the New QUARTERLY Series.) November, 1875.
No. CCXIX. (Vol. 1, 4th Series No. II.) February, 1876.

N.B.—These two Numbers are out of print.

No. CCXX.	(Vol. 1, 4th Series No. III.)	For May, 1876.
No. CCXXI.	(Vol. 1, 4th Series No. IV.)	For August, 1876.

Nos. CCXXII. to CCXLIX. (Vol. 2, 4th Series, to Vol. 8, 4th Series, Nos. V. to XXXII.) November, 1876, to August, 1883.

Nos. CCL. to CCLIII. (Vol. 9, 4th Series, Nos. XXXIII. to XXXVI.), November, 1883, to August, 1884.

Nos. CCLIV. to CCLVII. (Vol. 9, 4th Series, Nos. XXXVII. to XL.), November, 1884, to August, 1885.

Nos. CCLVIII. to CCLXI. (Vol. X., 4th Series, Nos. XLI. to XLIV.), November, 1885, to August, 1886.

Nos. CCLXII. to CCLXV. (Vol. XI., 4th Series, Nos. XLV. to XLVIII.), November, 1886, to August, 1887.

Nos. CCLXVI. to CCLXIX. (Vol. XII., 4th Series, Nos. XLIX. to LII.), November, 1887, to August, 1888.

Nos. CCLXX. to CCLXXIII. (Vol. XIII., 4th Series, Nos. LIII. to LVI.), November, 1888, to August, 1889.

Nos. CCLXXIV. to CCLXXVII. (Vol. XIV., 4th Series, Nos. LVII. to LX.), November, 1889, to August, 1890.

Nos. CCLXXVIII. to CCLXXXI. (Vol. XV., 4th Series, Nos. LXI. to LXIV.), November, 1890, to August, 1891.

Nos. CCLXXXII. to CCLXXXV. (Vol. XVI., 4th Series, Nos. LXV. to LXVIII.), November, 1891, to August, 1892.

Nos. CCLXXXVI. to CCLXXXIX. (Vol. XVII., 4th Series, Nos. LXIX. to LXXII.) November, 1892, to August, 1893.

Nos. CCXC. to CCXCIII. (Vol. XVIII., 4th Series, Nos. LXXIII. to LXXVI.), November, 1893, to August, 1894.

Nos. CCXCIV. to CCXCVII. (Vol. XIX., 4th Series, Nos. LXXVII. to LXXX.), November, 1894, to August, 1895.

Nos. CCXCVIII. to CCCV. (Vols. XX. & XXI., 4th Series, Nos. LXXXI. to LXXXVIII.), November, 1895, to August, 1897.

An Annual Subscription of 20s., paid in advance to the Publishers, will secure the receipt of the LAW MAGAZINE, free by post, within the United Kingdom, or for 24s. to the Colonies and Abroad.

Fifth Edition, revised and enlarged, 8vo, price 32*s.* *net.*

A TREATISE ON HINDU LAW AND USAGE.

By JOHN D. MAYNE, of the Inner Temple, Barrister-at-Law, Author of "A Treatise on Damages," &c.

"A new work from the pen of so established an authority as Mr. Mayne cannot fail to be welcome to the legal profession. In his present volume the late Officiating Advocate-General at Madras has drawn upon the stores of his long experience in Southern India, and has produced a work of value alike to the practitioner at the Indian Bar, or at home, in appeal cases, and to the scientific jurist.

"To all who, whether as practitioners or administrators, or as students of the science of jurisprudence, desire a thoughtful and suggestive work of reference on Hindu Law and Usage, we heartily recommend the careful perusal of Mr. Mayne's valuable treatise."—*Law Magazine and Review.*

In 8vo, 1877, price 15*s.*, cloth,

A DIGEST OF HINDU LAW,

AS ADMINISTERED IN THE COURTS OF THE MADRAS PRESIDENCY.

ARRANGED AND ANNOTATED

By H. S. CUNNINGHAM, M.A., Advocate-General, Madras.

DUTCH LAW.

In 1 Vol., 8vo, price 40*s.*, cloth,

THE OPINIONS OF GROTIUS, As contained in the Hollandsche Consultatien en Advijsen. Collated, translated, and annotated by D. P. DE BRUYN, B.A., LL.B., Ebden Essayist of the University of the Cape of Good Hope; Advocate of the Supreme Court of the Colony of the Cape of Good Hope, and of the High Court of the South African Republic. With Facsimile Portrait of Mr. HUGO DE GROOT.

In 2 Vols., Royal 8vo, price 90*s.*, cloth,

VAN LEEUWEN'S COMMENTARIES ON THE ROMAN-DUTCH LAW. Revised and Edited with Notes in Two Volumes by C. W. DECKER, Advocate. Translated from the original Dutch by J. G. KOTZÉ, LL.B., of the Inner Temple, Barrister-at-Law, and Chief Justice of the Transvaal. With Facsimile Portrait in the Edition by DECKER of 1780.

*** Vol. II. can be had separately, price 50*s.*

In 8vo, price 15*s.* 6*d.*, *net.*

VOET'S TITLES ON VINDICATIONES AND INTERDICTA, Or the Roman Dutch Law of Actions to Assert Rights of Property, including Injunctions and Possessory Actions, translated into English with side-notes; viz., Book VI. Titles I. to III., Book VII. Title VI., Book VIII. Title V., Book XX. Title IV., and Book XLIII. Titles I., XVI. to XXXIII., of Voet's Commentary on the Pandects, with a Scientific and General Introduction, Notes Explanatory of the Roman Civil and Roman Dutch, and English Law, Notes of Ceylon Enactments and Practice, and Decisions of the Supreme Court, Ceylon, etc. By JOHN J. CASIE CHITTY, Barrister-at-Law, Advocate, High Court, Madras, and Supreme Court, Ceylon.

In 8vo, price 42*s.*, cloth,

THE JUDICIAL PRACTICE OF THE COLONY OF THE CAPE OF GOOD HOPE AND OF SOUTH AFRICA GENERALLY. With suitable and copious Practical Forms, subjoined to, and illustrating the Practice of the several Subjects treated of. By C. H. VAN ZYL, Attorney-at-Law, Notary Public, and Conveyancer, etc. etc.

In Crown 8vo, price 31*s.* 6*d.*, boards,

THE INTRODUCTION TO DUTCH JURISPRUDENCE OF HUGO GROTIUS, with Notes by Simon van Groenwegen van der Made, and References to Van der Keesel's Theses and Schorer's Notes. Translated by A. F. S. MAASDORP, B.A., of the Inner Temple, Barrister-at-Law.

In 12mo, price 15*s.* *net*, boards,

SELECT THESES ON THE LAWS OF HOLLAND & ZEELAND. Being a Commentary of Hugo Grotius' Introduction to Dutch Jurisprudence, and intended to supply certain defects therein, and to determine some of the more celebrated Controversies on the Law of Holland. By D. G. VAN DER KESSEL, Advocate. Translated by C. A. LORENZ, Barrister-at-Law. Second Edition. With a Biographical Notice of the Author by Professor J. DE WAL, of Leyden.

In 8vo, Sixth Edition, price 9*s.*, cloth,

THE MARRIED WOMEN'S PROPERTY ACTS;

1870, 1874, 1882 and 1884,

WITH COPIOUS AND EXPLANATORY NOTES, AND AN APPENDIX OF THE ACTS RELATING TO MARRIED WOMEN.

By ARCHIBALD BROWN, M.A., Edinburgh and Oxon., and the Middle Temple, Barrister-at-Law. Being the Sixth Edition of The Married Women's Property Acts. By the late J. R. GRIFFITHS, B.A. Oxon., of Lincoln's Inn, Barrister-at-Law.

"Upon the whole, we are of opinion that this is the best work upon the subject which has been issued since the passing of the recent Act. Its position as a well-established manual of acknowledged worth gives it at starting a considerable advantage over new books; and this advantage has been well maintained by the intelligent treatment of the Editor."—*Solicitors' Journal.*

"The notes are full, but anything rather than tedious reading, and the law contained in them is good, and verified by reported cases. . . . A distinct feature of the work is its copious index, practically a summary of the marginal headings of the various paragraphs in the body of the text. This book is worthy of all success."—*Law Magazine.*

In 8vo, price 12*s.*, cloth,

THE LAW OF NEGLIGENCE.

SECOND EDITION.

By ROBERT CAMPBELL, of Lincoln's Inn, Barrister-at-Law, and Advocate of the Scotch Bar.

"No less an authority than the late Mr. Justice Willes, in his judgment in *Oppenheim* v. *White Lion Hotel Co.*, characterised Mr. Campbell's 'Law of Negligence' as a 'very good book;' and since very good books are by no means plentiful, when compared with the numbers of indifferent ones which annually issue from the press, we think the profession will be thankful to the author of this new edition brought down to date. It is indeed an able and scholarly treatise on a somewhat difficult branch of law, in the treatment of which the author's knowledge of Roman and Scotch Jurisprudence has stood him in good stead. We confidently recommend it alike to the student and the practitioner."—*Law Magazine.*

In 8vo, price 10*s.* 6*d. net.*

THE LAW AND PRIVILEGES RELATING TO THE ATTORNEY-GENERAL AND SOLICITOR-GENERAL OF ENGLAND,

with a History from the Earliest Periods, and a Series of King's Attorneys and Attorneys and Solicitors-General from the reign of Henry III. to the 60th of Victoria. By J. W. NORTON-KYSHE, of Lincoln's Inn, Barrister-at-Law.

BIBLIOTHECA LEGUM.

In 12mo (nearly 400 pages), price 2*s.*, cloth,

A CATALOGUE OF LAW BOOKS.

Including all the Reports in the various Courts of England, Scotland, and Ireland; with a Supplement to December, 1884. By HENRY G. STEVENS and ROBERT W. HAYNES, Law Publishers.

In small 4to, price 2*s.*, cloth, beautifully printed, with a large margin, for the special use of Librarians,

A CATALOGUE OF THE REPORTS IN THE VARIOUS COURTS OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND.

ARRANGED BOTH IN ALPHABETICAL & CHRONOLOGICAL ORDER. By STEVENS & HAYNES, *Law Publishers.*

Second Edition, much enlarged, in 8vo, price 20*s*., cloth,

CHAPTERS ON THE

LAW RELATING TO THE COLONIES.

To which are appended TOPICAL INDEXES of CASES DECIDED in the PRIVY COUNCIL on Appeal from the Colonies, Channel Islands and the Isle of Man, and of Cases relating to the Colonies decided in the English Courts otherwise than on Appeal from the Colonies.

BY CHARLES JAMES TARRING, M.A.,

ASSISTANT JUDGE OF H.B.M. SUPREME CONSULAR COURT, CONSTANTINOPLE, AND H.M.'S CONSUL; AUTHOR OF "BRITISH CONSULAR JURISDICTION IN THE EAST," "A TURKISH GRAMMAR," ETC.

CONTENTS.

In 8vo, price 10*s*., cloth,

THE TAXATION OF COSTS IN THE CROWN OFFICE.

COMPRISING A COLLECTION OF

BILLS OF COSTS IN THE VARIOUS MATTERS TAXABLE IN THAT OFFICE;

INCLUDING

COSTS UPON THE PROSECUTION OF FRAUDULENT BANKRUPTS, AND ON APPEALS FROM INFERIOR COURTS;

TOGETHER WITH

A TABLE OF COURT FEES,

AND A SCALE OF COSTS USUALLY ALLOWED TO SOLICITORS, ON THE TAXATION OF COSTS ON THE CROWN SIDE OF THE QUEEN'S BENCH DIVISION OF THE HIGH COURT OF JUSTICE.

BY FREDK. H. SHORT,

CHIEF CLERK IN THE CROWN OFFICE.

"This is decidedly a useful work on the subject of those costs which are liable to be taxed before the Queen's Coroner and Attorney (for which latter name that of 'Solicitor' might now well be substituted), or before the master of the Crown Office; in fact, such a book is almost indispensable when preparing costs for taxation in the Crown Office, or when taxing an opponent's costs. Country solicitors will find the scale relating to bankruptcy prosecutions of especial use, as such costs are taxed in the Crown Office. The 'general observations' constitute a useful feature in this manual."—*Law Times.*

"The recent revision of the old scale of costs in the Crown Office renders the appearance of this work particularly opportune, and it cannot fail to be welcomed by practitioners. Mr. Short gives, in the first place, a scale of costs usually allowed to solicitors on the taxation of costs in the Crown Office and then bills of costs in various matters. These are well arranged and clearly printed."—*Solicitors' Journal.*

Just Published, in 8vo, price 7*s.* 6*d.*, cloth,

BRITISH CONSULAR JURISDICTION IN THE EAST,

WITH TOPICAL INDICES OF CASES ON APPEAL FROM, AND RELATING TO, CONSULAR COURTS AND CONSULS;

Also a Collection of Statutes concerning Consuls.

By C. J. TARRING, M.A.,

ASSISTANT-JUDGE OF H.B.M. SUPREME CONSULAR COURT FOR THE LEVANT.

In one volume, 8vo, price 8*s.* 6*d.*, cloth,

A COMPLETE TREATISE UPON THE

NEW LAW OF PATENTS, DESIGNS, & TRADE MARKS,

CONSISTING OF THE PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883, WITH THE RULES AND FORMS, FULLY ANNOTATED WITH CASES, &c.

And a Statement of the Principles of the Law upon those subjects, with a Time Table and Copious Index.

By EDWARD MORTON DANIEL,

OF LINCOLN'S INN, BARRISTER-AT-LAW, ASSOCIATE OF THE INSTITUTE OF PATENT AGENTS.

In 8vo, price 8*s.*, cloth,

The TRADE MARKS REGISTRATION ACT, 1875,

And the Rules thereunder; THE MERCHANDISE MARKS ACT, 1862, with an Introduction containing a SUMMARY OF THE LAW OF TRADE MARKS, together with practical Notes and Instructions, and a copious INDEX. By EDWARD MORTON DANIEL, of Lincoln's Inn, Barrister-at-Law.

Second Edition, in one volume, 8vo, price 16*s.*, cloth,

A CONCISE TREATISE ON THE

STATUTE LAW OF THE LIMITATIONS OF ACTIONS.

With an Appendix of Statutes, Copious References to English, Irish, and American Cases, and to the French Code, and a Copious Index.

By HENRY THOMAS BANNING, M.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"The work is decidedly valuable."—*Law Times.*

"Mr. Banning has adhered to the plan of printing the Acts in an appendix, and making his book a running treatise on the case-law thereon. The cases have evidently been investigated with care and digested with clearness and intellectuality."—*Law Journal.*

In 8vo, price 1*s.*, sewed,

AN ESSAY ON THE

ABOLITION OF CAPITAL PUNISHMENT.

Embracing more particularly an Enunciation and Analysis of the Principles of Law as applicable to Criminals of the Highest Degree of Guilt.

By WALTER ARTHUR COPINGER,

OF THE MIDDLE TEMPLE, ESQ., BARRISTER-AT-LAW.

Sixth Edition, in 8vo, price 31*s.* 6*d.*, cloth,

THE INDIAN CONTRACT ACT, No. IX., of 1872.

TOGETHER

WITH AN INTRODUCTION AND EXPLANATORY NOTES, TABLE OF CONTENTS, APPENDIX, AND INDEX.

By H. S. CUNNINGHAM AND H. H. SHEPHERD,

BARRISTERS-AT-LAW.

Second Edition, in 8vo, price 15*s.*, cloth,

LEADING CASES and OPINIONS on INTERNATIONAL LAW

COLLECTED AND DIGESTED FROM

ENGLISH AND FOREIGN REPORTS, OFFICIAL DOCUMENTS, PARLIAMENTARY PAPERS, and other Sources.

With **NOTES and EXCURSUS**, Containing the Views of the Text-Writers on the Topics referred to, together with Supplementary Cases, Treaties, and Statutes; and Embodying an Account of some of the more important International Transactions and Controversies.

By PITT COBBETT, M.A., D.C.L.,

OF GRAY'S INN, BARRISTER-AT-LAW, PROFESSOR OF LAW, UNIVERSITY OF SYDNEY, N.S.W.

"The book is well arranged, the materials well selected, and the comments to the point. Much will be found in small space in this book."—*Law Journal.*

"The notes are concisely written and trustworthy. . . . . The reader will learn from them a great deal on the subject, and the book as a whole seems a convenient introduction to fuller and more systematic works."—*Oxford Magazine.*

Second Edition, in royal 8vo. 1100 pages, price 45*s.*, cloth,

STORY'S COMMENTARIES ON EQUITY JURISPRUDENCE.

Second English Edition, from the Twelfth American Edition.

By W. E. GRIGSBY, LL.D. (LOND.), D.C.L. (OXON.),

AND OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"It is high testimony to the reputation of Story, and to the editorship of Dr. Grigsby, that another edition should have been called for. . . . The work has been rendered more perfect by additional indices."—*Law Times.*

Second Edition, in 8vo, price 8*s.*, cloth,

THE PARTITION ACTS, 1868 & 1876.

A Manual of the Law of Partition and of Sale, in Lieu of Partition. With the Decided Cases, and an Appendix containing Judgments and Orders. By W. GREGORY WALKER, B.A., of Lincoln's Inn, Barrister-at-Law.

"This is a very good manual—practical, clearly written, and complete. The subject lends itself well to the mode of treatment adopted by Mr. Walker, and in his notes to the various sections he has carefully brought together the cases, and discussed the difficulties arising upon the language of the different provisions."—*Solicitors' Journal.*

Second Edition, in 8vo, price 22*s.*, cloth,

A TREATISE ON THE

LAW AND PRACTICE RELATING TO INFANTS.

By ARCHIBALD H. SIMPSON, M.A.,

OF LINCOLN'S INN, BARRISTER-AT-LAW, AND FELLOW OF CHRIST'S COLLEGE, CAMBRIDGE.

SECOND EDITION. By E. J. ELGOOD, B.C.L., M.A., of Lincoln's Inn, Barrister-at-Law.

"Mr. Simpson's book comprises the whole of the law relating to infants, both as regards their persons and their property, and we have not observed any very important omissions. The author has evidently expended much trouble and care upon his work, and has brought together, in a concise and convenient form, the law upon the subject down to the present time."—*Solicitors' Journal.*

"Its law is unimpeachable. We have detected no errors, and whilst the work might have been done more scientifically, it is, beyond all question, a compendium of sound legal principles."—*Law Times.*

"Mr. Simpson has arranged the whole of the Law relating to Infants with much fulness of detail, and yet in comparatively little space. The result is due mainly to the businesslike condensation of his style. Fulness, however, has by no means been sacrificed to brevity, and, so far as we have been able to test it, the work omits no point of any importance, from the earliest cases to the last. In the essential qualities of clearness, completeness, and orderly arrangement it leaves nothing to be desired.

"Lawyers in doubt on any point of law or practice will find the information they require, if it can be found at all, in Mr. Simpson's book, and a writer of whom this can be said may congratulate himself on having achieved a considerable success."—*Law Magazine*, February, 1876.

In one volume, royal 8vo, 1877, price 30*s.*, cloth,

THE DOCTRINES & PRINCIPLES OF THE LAW OF INJUNCTIONS.

By WILLIAM JOYCE,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

"Mr. Joyce, whose learned and exhaustive work on 'The Law and Practice of Injunctions' has gained such a deservedly high reputation in the Profession, now brings out a valuable companion volume on the 'Doctrines and Principles' of this important branch of the Law. In the present work the Law is enunciated in its abstract rather than its concrete form, as few cases as possible being cited; while at the same time no statement of a principle is made unsupported by a decision, and for the most part the very language of the Courts has been adhered to. Written as it is by so acknowledged a master of his subject, and with the conscientious carefulness that might be expected from him, this work cannot fail to prove of the greatest assistance alike to the Student—who wants to grasp principles freed from their superincumbent details—and to the practitioner, who wants to refresh his memory on points of doctrine amidst the oppressive details of professional work."—*Law Magazine and Review.*

BY THE SAME AUTHOR.

In two volumes, royal 8vo, 1872, price 70*s.*, cloth,

THE LAW & PRACTICE OF INJUNCTIONS.

EMBRACING

ALL THE SUBJECTS IN WHICH COURTS OF EQUITY AND COMMON LAW HAVE JURISDICTION.

By WILLIAM JOYCE,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

REVIEWS.

"A work which aims at being so absolutely complete, as that of Mr. Joyce upon a subject which is of almost perpetual recurrence in the Courts, cannot fail to be a welcome offering to the profession, and doubtless, it will be well received and largely used, for it is as absolutely complete as it aims at being. . . . . This work is, therefore eminently a work for the practitioner, being full of practical utility in every page, and every sentence, of it. . . . . We have to congratulate the profession on this new acquisition to a digest of the law, and the author on his production of a work of permanent utility and fame."—*Law Magazine and Review.*

"Mr. Joyce has produced, not a treatise, but a complete and compendious *exposition* of the Law and Practice of Injunctions both in equity and common law.

"Part III. is devoted to the practice of the Courts. *Contains an amount of valuable and technical matter nowhere else collected.*

"From these remarks it will be sufficiently perceived what elaborate and painstaking industry, as well as legal knowledge and ability has been necessary in the compilation of Mr. Joyce's work. No labour has been spared to save the practitioner labour, and no research has been omitted which could tend towards the elucidation and exemplification of the general principles of the Law and Practice of Injunctions."—*Law Journal.*

"He does not attempt to go an inch beyond that for which he has express written authority; he allows the cases to speak, and does not speak for them.

"The work is something more than a treatise on the Law of Injunctions. It gives us the general law on almost every subject to which the process of injunction is applicable. Not only English, but American decisions are cited, the aggregate number being 3,500, and the statutes cited 160, whilst the index is, we think, the most elaborate we have ever seen—occupying nearly 200 pages. The work is probably entirely exhaustive."—*Law Times.*

"This work, considered either as to its matter or manner of execution, is no ordinary work. It is a complete and exhaustive treatise both as to the law and the practice of granting injunctions. It must supersede all other works on the subject. The terse statement of the practice will be found of incalculable value. We know of no book as suitable to supply a knowledge of the law of injunctions to our common law friends as Mr. Joyce's exhaustive work. It is alike indispensable to members of the Common Law and Equity Bars. Mr. Joyce's great work would be a casket without a key unless accompanied by a good index. His index is very full and well arranged. We feel that this work is destined to take its place as a standard text-book, and *the* text-book on the particular subject of which it treats. The author deserves great credit for the very great labour bestowed upon it. The publishers, as usual, have acquitted themselves in a manner deserving of the high reputation they bear."—*Canada Law Journal.*

Third Edition, in 8vo, price 20*s.*, cloth,

A TREATISE UPON

THE LAW OF EXTRADITION,

WITH THE CONVENTIONS UPON THE SUBJECT EXISTING BETWEEN ENGLAND AND FOREIGN NATIONS,

AND THE CASES DECIDED THEREON.

By Sir EDWARD CLARKE,

OF LINCOLN'S INN, S.-G., Q.C., M.P.

"Mr. Clarke's accurate and sensible book is the best authority to which the English reader can turn upon the subject of Extradition."—*Saturday Review.*

"The opinion we expressed of the merits of this work when it first appeared has been fully justified by the reputation it has gained. It is seldom we come across a book possessing so much interest to the general reader and at the same time furnishing so useful a guide to the lawyer."—*Solicitors' Journal.*

"The appearance of a second edition of this treatise does not surprise us. It is a useful book, well arranged and well written. A student who wants to learn the principles and practice of the law of extradition will be greatly helped by Mr. Clarke. Lawyers who have extradition business will find this volume an excellent book of reference. Magistrates who have to administer the extradition law will be greatly assisted by a careful perusal of 'Clarke upon Extradition.' This may be called a warm commendation, but those who have read the book will not say it is unmerited."—*Law Journal.*

The Times of September 7, 1874, in a long article upon "Extradition Treaties," makes considerable use of this work and writes of it as "*Mr. Clarke's useful Work on Extradition.*"

In 8vo, price 2*s.* 6*d.*, cloth,

TABLES OF STAMP DUTIES

FROM 1815 TO 1878.

By WALTER ARTHUR COPINGER,

OF THE MIDDLE TEMPLE, ESQUIRE, BARRISTER-AT-LAW: AUTHOR OF "THE LAW OF COPYRIGHT IN WORKS OF LITERATURE AND ART," "INDEX TO PRECEDENTS IN CONVEYANCING," "TITLE DEEDS," &C.

"We think this little book ought to find its way into a good many chambers and offices."—*Solicitors' Journal.*

"This book, or at least one containing the same amount of valuable and well-arranged information, should find a place in every Solicitor's office. It is of especial value when examining the abstract of a large number of old title-deeds."—*Law Times.*

"His *Tables of Stamp Duties, from* 1815 *to* 1878, have already been tested in Chambers, and being now published, will materially lighten the labours of the profession in a tedious department, yet one requiring great care."—*Law Magazine and Review.*

In one volume, 8vo, price 14*s.*, cloth,

TITLE DEEDS:

THEIR CUSTODY, INSPECTION, AND PRODUCTION, AT LAW, IN EQUITY, AND IN MATTERS OF CONVEYANCING,

Including Covenants for the Production of Deeds and Attested Copies; with an Appendix of Precedents, the Vendor and Purchaser Act, 1874, &c. &c. &c. By WALTER ARTHUR COPINGER, of the Middle Temple, Barrister-at-Law; Author of "The Law of Copyright" and "Index to Precedents in Conveyancing."

"The literary execution of the work is good enough to invite quotation, but the volume is not large, and we content ourselves with recommending it to the profession."—*Law Times.*

"A really good treatise on this subject must be essential to the lawyer: and this is what we have here. Mr. Copinger has supplied a much-felt want, by the compilation of this volume. We have not space to go into the details of the book; it appears well arranged, clearly written, and fully elaborated. With these few remarks we recommend his volume to our readers."—*Law Journal.*

Third Edition, in 8vo, considerably enlarged, price 36*s.*, cloth,

THE LAW OF COPYRIGHT

In Works of Literature and Art; including that of the Drama, Music, Engraving, Sculpture, Painting, Photography, and Ornamental and Useful Designs; together with International and Foreign Copyright, with the Statutes relating thereto, and References to the English and American Decisions. By WALTER ARTHUR COPINGER, of the Middle Temple, Barrister-at-Law.

"Mr. Copinger's book is very comprehensive, dealing with every branch of his subject, and even extending to copyright in foreign countries. So far as we have examined, we have found all the recent authorities noted up with scrupulous care, and there is an unusually good index. These are merits which will, doubtless, lead to the placing of this edition on the shelves of the members of the profession whose business is concerned with copyright; and deservedly, for the book is one of considerable value."—*Solicitors' Journal.*

Third Edition, in One large Volume, 8vo, price 32*s.*, cloth,

A MAGISTERIAL AND POLICE GUIDE:

BEING THE LAW

RELATING TO THE

PROCEDURE, JURISDICTION, AND DUTIES OF MAGISTRATES AND POLICE AUTHORITIES,

IN THE METROPOLIS AND IN THE COUNTRY.

With an Introduction showing the General Procedure before Magistrates both in Indictable and Summary Matters.

BY HENRY C. GREENWOOD,

STIPENDIARY MAGISTRATE FOR THE DISTRICT OF THE STAFFORDSHIRE POTTERIES; AND

TEMPLE CHEVALIER MARTIN,

CHIEF CLERK TO THE MAGISTRATES AT LAMBETH POLICE COURT, LONDON:
AUTHOR OF "THE LAW OF MAINTENANCE AND DESERTION," "THE NEW FORMULIST," ETC.

Third Edition. Including the SESSION 52 & 53 Vict., and the CASES DECIDED in the SUPERIOR COURTS to the END OF THE YEAR 1889, *revised and enlarged*,

BY TEMPLE CHEVALIER MARTIN.

"A second edition has appeared of Messrs. Greenwood and Martin's valuable and comprehensive magisterial and police Guide, a book which Justices of the peace should take care to include in their Libraries."—*Saturday Review.*

"Hence it is that we rarely light upon a work which commands our confidence, not merely by its research, but also by its grasp of the subject of which it treats. The volume before us is one of the happy few of this latter class, and it is on this account that the public favour will certainly wait upon it. We are moreover convinced that no effort has been spared by its authors to render it a thoroughly efficient and trustworthy guide."—*Law Journal.*

"Magistrates will find a valuable handbook in Messrs. Greenwood and Martin's 'Magisterial and Police Guide,' of which a fresh Edition has just been published."—*The Times.*

"A very valuable introduction, treating of proceedings before Magistrates, and largely of the Summary Jurisdiction Act, is in itself a treatise which will repay perusal. We expressed our high opinion of the Guide when it first appeared, and the favourable impression then produced is increased by our examination of this Second Edition."—*Law Times.*

"For the form of the work we have nothing but commendation. We may say we have here our ideal law book. It may be said to omit nothing which it ought to contain."—*Law Times.*

"This handsome volume aims at presenting a comprehensive magisterial handbook for the whole of England. The mode of arrangement seems to us excellent, and is well carried out."—*Solicitors' Journal.*

"The *Magisterial and Police Guide*, by Mr. Henry Greenwood and Mr. Temple Martin, is a model work in its conciseness, and, so far as we have been able to test it, in completeness and accuracy. *It ought to be in the hands of all who, as magistrates or otherwise, have authority in matters of police.*"—*Daily News.*

"*This work is eminently practical, and supplies a real want. It plainly and concisely states the law on all points upon which Magistrates are called upon to adjudicate, systematically arranged, so as to be easy of reference. It ought to find a place on every Justice's table, and we cannot but think that its usefulness will speedily ensure for it as large a sale as its merits deserve.*"—*Midland Counties Herald.*

"The exceedingly arduous task of collecting together all the enactments on the subject has been ably and efficiently performed, and the arrangement is so methodical and precise that one is able to lay a finger on a Section of an Act almost in a moment. It is wonderful what a mass of information is comprised in so comparatively small a space. We have much pleasure in recommending the volume not only to our professional, but also to our general readers; nothing can be more useful to the public than an acquaintance with the outlines of magisterial jurisdiction and procedure."—*Sheffield Post.*

In 8vo, price 12*s.* 6*d.* cloth,

THE LAW RELATING TO THE

ADMINISTRATION OF CHARITIES,

WITH THE

CHARITABLE TRUSTS ACTS, 1853-1894, AND LOCAL GOVERNMENT ACT, 1894.

By THOMAS BOURCHIER-CHILCOTT,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

In one thick volume, 8vo, price 32*s.*, cloth,

THE LAW OF RAILWAY COMPANIES.

Comprising the Companies Clauses, the Lands Clauses, the Railways Clauses Consolidation Acts, the Railway Companies Act, 1867, and the Regulation of Railways Act, 1868; with Notes of Cases on all the Sections, brought down to the end of the year 1868; together with an Appendix giving all the other material Acts relating to Railways, and the Standing Orders of the Houses of Lords and Commons; and a copious Index. By HENRY GODEFROI, of Lincoln's Inn, and JOHN SHORTT, of the Middle Temple, Barristers-at-Law.

In a handy volume, crown 8vo, 1870, price 10*s.* 6*d.*, cloth,

THE LAW OF SALVAGE,

As administered in the High Court of Admiralty and the County Courts; with the Principal Authorities, English and American, brought down to the present time; and an Appendix, containing Statutes, Forms, Table of Fees, etc. By EDWYN JONES, of Gray's Inn, Barrister-at-Law.

In crown 8vo, price 4*s.*, cloth,

A HANDBOOK OF THE

LAW OF PARLIAMENTARY REGISTRATION.

WITH AN APPENDIX OF STATUTES AND FULL INDEX.

By J. R. SEAGER, REGISTRATION AGENT.

Second Edition, in One Vol., 8vo, price 12*s.*, cloth,

A COMPENDIUM OF ROMAN LAW,

FOUNDED ON THE INSTITUTES OF JUSTINIAN; together with Examination Questions Set in the University and Bar Examinations (with Solutions), and Definitions of Leading Terms in the Words of the Principal Authorities. Second Edition. By GORDON CAMPBELL, of the Inner Temple, M.A., late Scholar of Exeter College, Oxford; M.A., LL.D., Trinity College, Cambridge; Author of "An Analysis of Austin's Jurisprudence, or the Philosophy of Positive Law."

In 8vo, price 7*s.* 6*d.*, cloth,

TITLES TO MINES IN THE UNITED STATES,

WITH THE

STATUTES AND REFERENCES TO THE DECISIONS OF THE COURTS RELATING THERETO.

By W. A. HARRIS, B.A. OXON.,

OF LINCOLN'S INN, BARRISTER-AT-LAW; AND OF THE AMERICAN BAR.

INDEX

To the Names of Authors and Editors of Works enumerated in this Catalogue.

BRADBURY, AGNEW, & CO. LD., PRINTERS, LONDON AND TONBRIDGE.